SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 513

THE UNITED STATES OF AMERICA, APPELLANT

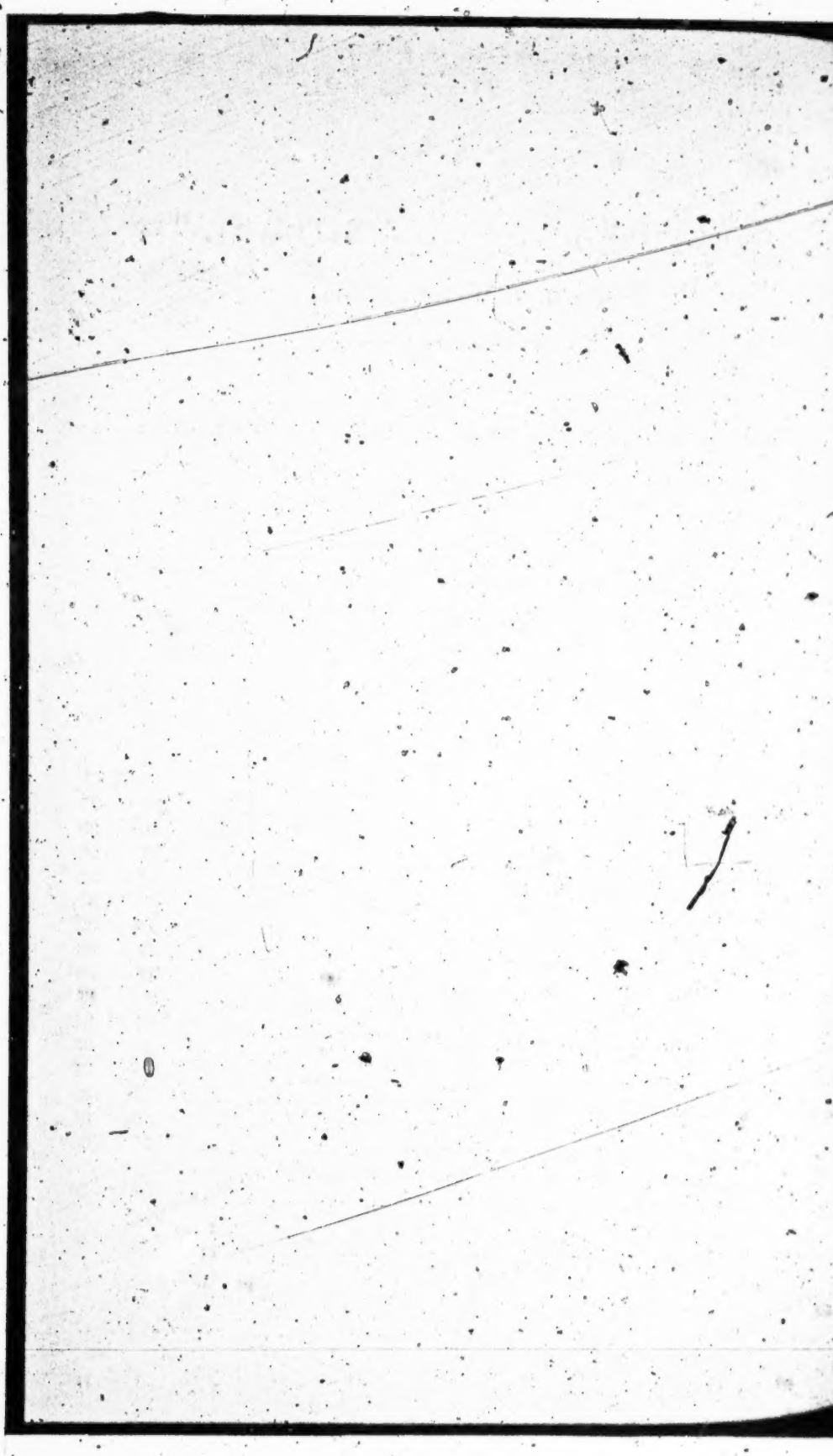
vs.

O. B. LIMEHOUSE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

INDEX

	Original	Print
Record from D. C. U. S. Eastern South Carolina	1	1
Caption (omitted in printing)	1	1
Indictment	1	1
Demurrer	35	25
Motion to quash	36	25
Opinion, Cochran, J	37	26
Order sustaining demurrer	47	32
Exception to order sustaining demurrer	47	32
Order granting motion to quash	49	32
Exception to order granting motion to quash	49	33
Certificate of district judge	51	33
Bill of exceptions	52	34
Assignments of error	53	34
Petition for appeal	54	35
Order allowing appeal	54	35
Citation and service (omitted in printing)	55	35
Stipulation as to content of record	56	35
Clerk's certificate (omitted in printing)	57	36
Statement of points to be relied upon and designation to print entire record	58	36



1 [Caption omitted.]

In United States District Court, Eastern District of South Carolina

THE UNITED STATES vs. O. B. LIMEHOUSE, ALIAS BOSSY LIMEHOUSE	Vio. sec. 334, title 18 U. S. C.

Indictment.

Filed Sept. 28, 1931

2 At a stated term of the District Court of the United States for the Eastern District of South Carolina, begun and holden at Aiken, within and for the district aforesaid, on the fourth Monday in September, in the year of our Lord one thousand nine hundred and thirty-one, the grand jurors of the United States of America, within and for the district aforesaid, upon their oaths respectively do present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one A. Waring, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

1st count, title 18, sec. 334, U. S. C.

3 "You dirty drunk son of a Bitch you shot off your mouth about Pointel and you double crossed us on the election. But We found out. Serves us right for trusting a god damn Waring—Never was one But was a traitor and son of a Bitch. Keep your mouth shut aBout

Grooms and this Letter or we'll fix you along with the DRL's., You know We can do it. We know plenty about you. It's common talk in Stallsville that Day uses your ugly greasy wife and we all know your sister married a nigger. Grooms is goeing free. Keep your mouth shut about him and this letter or you'll get yours. I Believe you always were a god damn D. R. L. stool pigeon and son of a Bitch";

contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States.

2d count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Davaun Rhame, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

4

"You DRL son of a Bitch We heard what you said—this is to tell you to keep your mouth shut or you'll get what Pointel got—You are a son of a Bitch and adulterer and your sisters are all Whores—You dare to vote against the men who have the right to run things But We hear all you say from one of our men and We'll fix every DRL son of a Bitch Before We finish.—When you lost Pointel you lost the only man With any guts in your god damn gang of thieves and liars and adulterers—We are goeing to fix your god damn DRL and every son of a Bitch and Whore in it"; contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

3d count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, other-

wise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully, did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston,
5 in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one W. C. Kiser, Harleyville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You half Breed son of a Bitch you stole a good mans job. But you'll never serve your term Because We've just started in on you DRL Bitches and sons of Bitches. We'll show you who runs the county. Grooms is goeing free. We're goeing to have Jessen removed from office and a lot more of you DRL sons of Bitches are goeing like Pointel Went and the men Who have the right to run the county will run it. You son of a Bitch and husband of a slut and whore",

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letters and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which
6 said letter and writing was then and there contained in a certain envelope, addressed and di- 4th count, title 18, sec. 334, U. S. C.

rected to one R. B. Lee, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You D. R. L. K. K. son of a Bitch you stick your half White face in the town and county matters. But you are just a coward and thief and adulterer. The K. K. is a joke and so are you. Since you lost Pointel they's not a man of you Would face us. We all laugh at you and know your greasy Bitch of a Wife Was common to your Catholic friends untill they got tired of her. You can't do anything but talk damn lies aBout Better men than you—But the men who have the right to run Dor. County are comeing back. You stole the election and We can have your dirty DRL sons of Bitches removed and honest men put in. You've Been meddling again aBout Grooms Bail. Well he's goeing free. All the DRL sons of Bitches in Dor. County can't convict him. Keep your god damn mouth shut aBout this letter. We know enough aBout you to fix you you liar and adulterer and son of a Bitch and Coward"; contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

6th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston,
7 in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one J. J. Martin, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You DRL son of a Bitch you and your slut and adulteress Wife meddle the men Who have the right to run the county. You'll Wish you never sat on that jury. When they got Pointel they got the only man With guts in DRL and they'll get the rest of you Before they stop. So What are you goeing to do? You coward and dirty Kluxer and son of A Bitch";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present; That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. Lillian H. Knight, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows: 6th count, title 18, sec. 334, U. S. C.

"You DRL slut and whore you helped your son of a Bitch of a Brother get away from us. But we'll get him yet and you and every other Bitch and son of a Bitch in the DRL. We've just started on you all and we're going to make you catch hell for working against the men Who have the right to run things. Keep your god damn mouth shut about this letter you half Breed adulteress and Bitch and Whore";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester 7th count, title 18, sec. 334, U. S. C.

County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within
9 the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one T. R. Waring, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You lousy Big Bellied DRL son of a Bitch you think you can run the toWn by Writing god damn letters telling people Who to vote for—Every god damn Waring is a coWard and thief traitor son of a Bitch—You just got your Big sow of a daughter married in time—She's Ben seen in the Woods By us lying with B—— and any other son of a Bitch What Would take her";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

8th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly,
10 and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one L. C. Waring, jr., Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known

as "Bossy." Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You D. R. L. son of a Bitch your thieving half White family Beat Miler But the men who have the right to run the county are goeing to run it anyhow and a lot more of you sons of Bitches are goeing like Pointel Went. You sisters are sluts and Bitches for any man Who Wants them and you are a son of a Bitch. When you lost Pointel you lost the only man With guts in the D. R. L. Watch What We do to the rest of you sons of Bitches and Whores";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

9th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited
11 for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Lon Weeks, St. George, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You drunken shyster son of a Bitch, you But into this case But you'll never convict Grooms—If you do he'll be pardoned. Better drop it and keep your god damn lying mouth shut—Pointel Was the only man of you had guts to face us—Lot more of you are goeing like he did and that little Black headed Bitch of his is goeing to get her's Before long—You and Tarkington and Blakely don't go to see her for any honest reason—But all D. R. L's are adulterers and whores—Your Wife is

common to the town and you thief and seducer and son of a Bitch and coward—You can't do anything but talk lies on honest men—If you Bring G—— to trial we'll Burry every DRL Bitch and son of a Bitch in filth where they Belong to be—We've got the power Behind us to do it—You can't prove anything about this letter so keep your mouth shut and get out of that case you dirty thief and adulterer and DRL son of a Bitch ";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

10th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dor-
12 chester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one John Owens (Lincolnville), Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You DRL son of a Bitch and murderer you think you and your son of a Bitch Whelp can run Chas. and Dor. County But the men who have the right are comeing Back to run every DRL son of a Bitch and Bitch to hell Grooms is goeing free This is to tell you to keep your god damn mouth shut and tell that half White son of a Bitch boy of yours that thinks he's a deputy to stop running around trying to mix us honest men in this case or he'll get What Pointel got When you lost him you lost the only one of your god damn crowd that had guts to face a man So keep your god damn lying mouth shut you Bootlegger and murderer and son of a Bitch and Coward ";

contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States.

11th count, title 18, sec. 334, U. S. C.

13 And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope addressed and directed to one W. B. Tarkington, St. George, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You dirty D. R. L. and Republican son of a Bitch—you write about Bullet proof vests and lie on honest men, but you and that Black headed little Bitch of Pointel's are goeing like he Went and all the other god damned D. R. L's, and the ones that have the right to run the county will run it. There aint a man of your god damn K. K. K. D. R. L. has guts to face us since you lost Pointel. If you show this letter We'll show Why you go to see Pointel's and Blakeley's Bitches. You D. R. L. adulterer. We are goeing to run you and your dirty rag out of Dorchester County. We've got the only good paper in the county and the Governor too back of us.

Grooms is goeing free and you know it so stop
14 lying on honest men you D. R. L. liar and coward and adulterer and son of a Bitch";

contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States.

12th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the

jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one D. J. McAlhany, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You DRL son of a Bitch you Better leave those Books alone and stop trying to get honest men in trouble.— We're going to fix every son of a Bitch of you Before we stop. Pointel is just the first. Grooms is goeing free. If you convict him he'll Be pardoned. We have the right to run the county so mind your own damn Business and Watch your fat Bitch of a Wife. She's an adulteress and common to any OBL man Who Wants her But so is every other DRL Bitch. We'll fix every son of a Bitch and Whore of you Befo[illegible] We finish and you can't do a god damn thing about it you adulterer and son of a Bitch";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

13th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one M. M. Blakeley, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the

said letter to be filthy as aforesaid, and which said letter read as follows:

"You son of a Bitch you Went Back on Miler But you'll get yours and so will that Black headed Bitch of Pointel's. She's scared now to ride By herself. Grooms will go free. He did his job. And the men who
16 have the right to run the county will run it again and run every god damn DRL to hell where you Belong. So what are you goeing to do about it. You've lost the only man of your god damn Bunch was not scared to look a real man in the face. Your thieving sons of Bitches of office holders are all goeing to Be removed and honest men put Back. We've just started in to show you DRL sons of Bitches and Whores What We can do. Keep your god damn mouth shut about this letter and stop running around trying to mix innocent men up in that case unless you Want to go to hell";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

14th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present; That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one W. B. Browning, St. George, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing
17 the said letter to be filthy as aforesaid, and which said letter read as follows:

"You murderer and son of a Bitch keep your god damn mouth shut about Better men than you. You stole a good mans job and you stole your poll But you D. R. L. sons of Bitches are goeing to catch hell now. When you lost Pointel you lost the only man had any guts in your god damn K. K. and DRL and youre goeing to catch hell. You and Weeks are just thieves and sons

of Bitches and cowards. You ought to Be in the chair—Your DRL Bitch is common to any OBL man who wants her and so are all other DRL Whores Were goeing to make evry god damn son of a Bitch and adulterer of you Wish to hell youd never fought the men who have the right to run the County and who are coming Back to run it";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

15th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. J. E.
18 Thrower, Ridgeville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You dirty DRL Bitch and adulteress you and that Browning Whore try to run the county But the ones that have the right to run it are coming Back and going to run all your god damn DRL Bitches and son of Bitches to hell where you Belong to be—You've lost the only man in the DRL had guts and youre goeing to catch hell now for fighting the ones that have the right to run the county You are just a Bunch of Liars and thieves and whores and adulterers and cowards";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

16th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand

nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Doctor Tupper, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

19

"You son of a Bitch and dirty thief you and your snorty nosed Will thief and son of a Bitch of a nephew Better stop interferring with the men Who have the right to run Dor. County. You are the Biggest liar and adulterer in S'ville. Your K. K. and DRL is a joke and youll Be the next to get yours. Weve just started to show you What We can do. You DRL sons of Bitches What We can do—Well fix every god damn one of you—Grooms will get Bail and he'll go free and all the shyster lawyers here and in Dor. County cant keep him out of his rights";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

17th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. Joe Meyer, Summerville, S. C., and was unsigned, he, the said O. B.

Limehouse, otherwise known as "Bossy" Lime-
20 house, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You DRL adulteress you fought Mller and you fought the men who have the right to run the county. But we are going to run it anyhow and run every DRL Bitch and son of a Bitch to hell. Your Psalm singing son of a Bitch husband stole a good mans job and he'll get his next. Grooms is goeing free. We'll see to that. And a lot more of you DRL Bitches and Whores Will Be like that little Black headed Bitch of Pointel's Before We finish With you";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

18th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Coroner Mallard, Jedberg, S. C., and was unsigned, he, the said O. B. Lime-
21 house, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You god damn DRL son of a Bitch you talked about political funerals Well wer'e goeing to give you plenty of real funerals of DRL sons of Bitches. We've just started in on you the men Who have the right to run the county are comeing Back and are going to Burry every DRL whore and adulteress and son of a Bitch and coward six feet under ground Keep your god damn mouth shut about this letter and about Grooms or you'll Be next. The ones that have the right to run Dor. County are goeing to run it";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty-nine, at Charleston, in the county of Charleston, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States, to wit, the post office at Charleston, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. W. B. Browning, Ridgeville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows: 19th count, title 18, sec. 334, U. S. C.

"You DRL Bitch and Whore you and your adulterer and murderer husband think you can run the county. But you'll find out Who has the power. We'll get every Bitch and son of a Bitch of you Before We finish. You'll wish to god you'd never meddled the ones that have the right to run the county. You stole the election from honest men. But you are goeing to catch hell like you deserve you dirty slut and Bitch and adulteress";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth day of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a 20th count, title 18, sec. 334, U. S. C.

certain filthy letter and writing, in an authorized depository of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Lon Weeks, St. George, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

23

"Well mister Senator a hell of a lot of good it did you to go up to the governor and lie on good men. He knows who runs Dor. County and who is goeing to keep on running it in spite of all the DRL sons of Bitches and Bitches that stole the election from them. You can hold all the sneaking cowardly meetings you want it will do you a hell of a lot of good. You K. K. sons of Bitches are a flock of cut tail capons and a joke. You and that son of a Bitch of a dutchman Jessen ought to be removed from office and lynched too for calling in federal aid on state matters that only Belong to the gov. But that Will do you a hell of a lot of good. You cant find out whose writing these letters—can you. Well we are tired of writing now and we'll show you what We can do. We are going to send one DRL to hell within the month and you'll never know Who got the son of a Bitch or Bitch. Watch and see";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

21st count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth day of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter; to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. Lon Weeks, St. George, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as

24

"Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You dirty DRL Whore and adulteress you are a fit bedfellow for your son of a Bitch husband—You and him are a fine pair to try and run the county—Well tell him We are out to show everybody that he and all the rest of the K. K. DRL Bastards are a god damn failure and We'll make the county too hot to hold them—You can look for hell to begin popping any time now—Your drunken son of a Bitch of a man talked about the Way honest officers carried out the law then he helped Jessen and Poulnot ill treat good innocent men—Well tell him all the god damn detectives and P. O. men Wont help him find out anything and before We get through with you K. K. DRL Bastards you'll Wish to hell you'd never meddled honest men;"

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth day of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. R. B. Lee, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

22d count, title 18, sec. 334, U. S. C.

"You dirty little DRL Bitch you and your K. K. son of a Bitch of a man and your half Breed Brats ought to be run out of town. You try to run the county and you are scum of the earth and lower than the dirtiest nigger in it.—Your man is a coward and a thief—he

23d count, title 18, sec. 334, U. S. C.

dont pay his debts and has Been keeping a Brass ankle Bitch across the tract—If you dont know it you are the only one in Dor. County that dont—We are going to show up you god damn DRL's to the public till you'll Wish to God you'd not cheated decent men out of their jobs—Your man is just a Bastard any way and you and he and your Whelps have no right to the name you use—His parents were not married by the laws of this state—the old families who settled S'ville know all this—they are the ones that have a right to run the town and county and that intend to run it";

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

26 And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth day of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one W. B. Tarkington, St. George, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"Well you lying Republican Bastard where are those affidavits you talked so Big about in Columbia. A hell of a lot of help you'll get from Richards he knows damn Well that all the decent men and Women in Dor. county are OBL's and the DRL's are all sons of Bitches and their Whores. We are going to show the Whole state that you god damn DRL's are'nt fit to run the county. You can look to catch hell from now on. We are out to make all the trouble We can for your god damn lying thieving administration. But you'll never know whose doing it Because you hav'nt got as much Brains in your

Whole crowd as one of our men has in his finger. Now
listen you K. K. son of a Bitch and tell all the cow-
27 ardly Bastards Who sneak off to secret meetings you
can look for the Devil to break loose now and you
can look for one DRL funeral Within the month";
contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

24th count, title 18, sec. 334, U. S. C.

And the grand jurors, aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Sheriff Jessen, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You son of a Bitch of a dirty Dutchman you criticize honest men for the way they ran the county and you and that son of a Bitch of a dry well cleaner Poulnot lock up innocent men and try to make them lie on better men than you both. Well you'll get a hell of a lot of good from all your god damn detectives and P. O. Inspectors—
the Gov. laughs at you and We are goeing to make
the State see that you and your god damn DRL
28 sons of Bitches cant hold down Dor. county. You
can look for hell from now on But you'll never find
out Whose Behind it all. You and your son of a Bitch Brother robbed your daddy When he was living. You aint fit for your job and Before We get through you'll be sorrier than hell that you stole it from an honest man";
contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

25th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. Alexander Moore, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You dirty lying DRL Bitch its a damn good thing you got out of S'ville and if you know What is good for you stay out. We've got hold of the list of DRL auxiliary Whores and you are one of them in spite of all your lies to your naybors at West End. Well you cant get away with it you lying double faced
29 Bitch. Every word you and your son of a Bitch husband says is repeated to us. You Better by a damn sight listen to What your Best friends tell you and stick to the party that has the right to rule Dor. County and that is goeing to rule it. Either do that or dont come back";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

26th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in an authorized deposi-

tary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. Joe Barry, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You douBle faced DRL Bitch you think youre smart and fool your naybors but they make a damn fool of you and We hear all you say and do. Well We Write you Because We knoW you Wear the pants in your house to tell you to keep your lying mouth shut aBout your naybors Who are a dam sight better than you are and to make your son of a Bitch of a half nigger Creole husband stop meddling those accounts unless you Want to be a Widow. Maybe you'd like to get rid of the poor rat so you could go off in the Woods with Ank Waring like you used to do. W. Waring is a smart man if he knows Who is the daddy of that kinky headed baby he's got there. But he's just like all other dirty DRL sons of Bitches and dont care. Maybe this Will Warn you to mind your Business and not lie on people that are better than you—you Bitch and adulteress";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

17th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Sheriff Poulnot, Charleston, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the

envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"You god damned interfering son of a Bitch
31 and a privy cleaner, you and that Bastard Will thief Allen Better By a damned sight mind your oWn Business and keep out of Dorchester County unless you want to get What some of those god damn DRL's are going to get before long. You shot off your damned lying mouth about decent men that Were running Dorchester as it should be run, then you and that son of a Bitch dutchman Jessen arrested innocent men without Warrant and tried to make them lie on good honest men. If you have any use for your yaller hide keep out of Dorchester after this—Hell is going to start popping there—and in a damned short time—and you and all your lousy detectives wont Be aBle to prove any more than you can right now";

contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

28th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in an authorized depository of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Mrs. Emily Klauber
(care Weeks and Browning), St. George, S. C.,
32 and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"Emily Klauber your dirty jew slut and DRL Bitch you neednt think you'll get off Without hearing What decent people of Dor. county think of you. You stole a good mans job but We all know What you give Weeks

and Browning in return. Well you dirty whore all the DRL and K. K. sons of Bitches in Dor. county cant stop us telling What We know about the Bitches and sons of Bitches Who stole election and jobs from honest men. And we are telling all over the state What a Bunch of dirty thieves and whores and adulterers you are. Tell that drunk son of a Bitch Weeks that keeps you that he can look for hell to start popping right now";
contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

29th count, title 18, sec. 334, U. S. C.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the twentieth day of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery,

33 certain nonmailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one W. B. Browning, Ridgeville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows:

"Well you cowardly K. K.-DRL son of a Bitch youve found out a hell of a lot about these letters and youll find out a hell of a lot more—Youve had your day you dirty thief—you and your Big half White Bitch are mostly responsible for stealing the election from the only men fit to run the county—Well We'll give you a belly full of running it We are going to show the publick that you god damn DRL sons of Bitches arent fit to hold office and cant even take care of your own people—You K. K. Bastards can hold all the sneaking meetings you Want—theyll do you a hell of a lot of good—You can look for lightening to strike Where you lest expect it—We promise you one god damn DRL funeral within the month—And youll never prove Whose Behind it all.—But We'll prove to the publick that youre just a Bunch

of Bastard sons of Bitches and cant hold the county down";
contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That O. B. Limehouse, otherwise known as "Bossy" Limehouse, late of Dorchester County, in the State of South Carolina, on the 34 twentieth day of June, in the year of our Lord one thousand nine hundred and twenty-nine, at Summerville, in the county of Dorchester, in the said State of South Carolina, in the said district and division, and within the jurisdiction of this court, unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain non-mailable matter, to wit, a certain filthy letter and writing, in an authorized depositary of the United States for mail matter, namely, a mail box at Summerville, in the county and State aforesaid, which said letter and writing was then and there contained in a certain envelope, addressed and directed to one Miss Edna Jessen, Summerville, S. C., and was unsigned, he, the said O. B. Limehouse, otherwise known as "Bossy" Limehouse, then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid, and which said letter read as follows: 30th count, title 18, sec. 334, U. S. C.

"You dirty DRL Bitch and meddling old maid you and your thieving Brothers are making a hell of a success in running the county after stealing the election They isn't a Woman in your god damn DRL Auxiliary that is decent. You are all of bunch of low Whores and prostitutes and they isn't a dam dirty Bitch of you But is going to Be sorrier than hell she Went in it. You can tell your dirty Bitches and adulteresses. We'll see to that. The County is going to be run By decent White men and not by god damn dirty thieving Dutchmen and K. K. sons of Bitches and you low life DRL Bitches who stole the polls for them can look to get yours right along with them";
contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

HENRY E. DAVIS,
United States Attorney.

A true bill.
W. C. WILBUR,
Foreman, Grand Jury.

35 In United States District Court

Demurrer

Filed Oct. 10, 1931

And now comes the defendant, O. B. Limehouse, and demurs to the indictment and each and every count thereof in this case on the following grounds, to wit:

That said indictment and no count thereof states any fact or facts constituting an offense committed by him against section 334, title 18, U. S. C., or against any act or acts of Congress in such case made and provided.

JNO. P. GRACE, *Atty. for Deft.*
W. C. WOLFE.

CERTIFICATE

I, John P. Grace, Esq., hereby certify that the foregoing demurrer is in my opinion meritorious.

JNO. P. GRACE,
Member of the Bar of the U. S. District Court for the Eastern District of South Carolina.

OCT. 10, 1931.

36 In United States District Court

Motion to quash

Filed Oct. 10, 1931

UNITED STATES OF AMERICA,
Eastern District of South Carolina,
In the District Court,
Charleston Division.

And now comes the defendant, O. B. Limehouse, and moves to quash the indictment herein, and each and every count thereof, because said indictment and no count thereof states facts constituting any offense against the law, and particularly in violation of section 334, title 18, U. S. C., and that the offense or offenses alleged to have been committed by the defendant do not come within the terms or within the purview of the acts of Congress in such cases made and provided, and particularly section 334, title 18, U. S. C.

JNO. P. GRACE, *Atty. for Dft.*
W. C. WOLFE.

CERTIFICATE

I, John P. Grace, Esq., hereby certify that the foregoing motion to quash is in my opinion meritorious.

JNO. P. GRACE,
Member of the Bar of the U. S. District Court for the Eastern District of South Carolina.

OCT. 10, 1931.

37 In United States District Court for the Eastern District of South Carolina

THE UNITED STATES OF AMERICA

vs.

O. B. LIMEHOUSE

Opinion

Filed Oct. 13, 1931

The defendant stands indicted under U. S. Code, title 18, sec. 334, for sending through the mails certain letters which are set forth in the various counts of the indictment and are alleged to be filthy within the meaning of the statute. The defendant has filed a demurrer and made a motion to quash all the counts of the indictment on the ground that the letters set forth therein show upon their face that they are not within the meaning of the statute. The original statute (R. S., sec. 3893) prohibited the mailing of "every obscene, lewd, or lascivious" book, letter, etc. In the case of Swearingen v. U. S. (161 U. S. 446), the Supreme Court held that the original statute did not cover language which was coarse, vulgar, and, as applied to an individual, libellous; but that the offence aimed at was the use of the mail to circulate or deliver matter which tended to corrupt the morals of the people, and that the words "obscene," "lewd," and "lascivious," as used in the statute, signified that form of immorality which has relation to sexual impurity, and have the same meaning as given them at common law in prosecutions for obscene libels; and, as the statute is highly penal, it should not be held to embrace language unless it is fairly within its letter and spirit. While it is not expressly so stated
38 in the opinion of the court, it is evident that this construction of the statute was reached by restricting the meaning of the word "obscene" under the familiar rule of a sociis, so as to give it a similar meaning to the words "lewd" and "lascivious."

The letters now under consideration are clearly not within the meaning of the original statute as construed in the Swearingen case, and the Government so concedes. The language of the letters is coarse, vulgar, indelicate, and some of it is plainly libellous, and

some possibly indecent, but it does not tend to corrupt the morals of the people in relation to sexual matters.

But the original statute was amended by adding the words "and every filthy," so that the statute now reads "every obscene, lewd, or lascivious and every filthy" book, letter, etc. The contention of the Government is that the addition of the words "and every filthy" imports into the statute a new class of cases which need not relate to sexual matters nor tend to corrupt the morals, and that the letters in question come within the meaning of that word when so construed. The defendant contends that those words add nothing to the statute, but when properly construed in connection with the context, must be held to have the same meaning practically as the word "obscene" and be restricted, as that word was restricted, by the context.

In considering this matter, I think it advisable first to consider the meaning of the two words "obscene" and "filthy," respectively. While they are synonymous, they are not absolutely co-extensive. They cover some common ground, but each covers some ground not covered by the other. Compare the definitions of the two
39 words in the Century and Standard Dictionaries, respectively. The word "obscene" covers some ground not covered by the word "filthy," in that "obscene" sometimes has the meaning ill-omened; but this meaning of "obscene" may be disregarded here, for it has never been contended that it was used in the sense of ill-omened, either in the present statute or the original. The word "filthy" covers some ground not covered by the word "obscene," for "filthy" may refer to the physical, material condition of an article, while "obscene" usually refers to language, ideas, literature, etc. This distinction between the two terms may be also disregarded, because it is perfectly evident that Congress did not by the use of the word "filthy" intend that the statute should cover cases of the physical, material condition of the book or other article. Laying aside, therefore, these two differences, and considering the meaning of the two terms in the connection in which they are used here—that is, with reference to language, ideas, literature, etc., it is perfectly clear to my mind that they are for all practical purposes co-extensive. The word "filthy" in such a connection certainly has no broader signification than the word "obscene." I do not see any escape from the conclusion, therefore, that on the face of the statute the addition of the word "filthy" did not enlarge it. Congress added to the statute a word practically identical with "obscene," placed it in the same connection, concerning the same subject-matter, and if the word "obscene" under the original statute should be restricted because of the context, it is impossible to resist the conclusion that the word "filthy" should be likewise restricted. Upon the face of the statute, therefore, there is no great difficulty in reaching the conclusion that letters, to come within the amended

statute, must be filthy and must refer to sexual matters and be calculated to corrupt the morals of the people.

40 It is said, however, that the proceedings in the House of Representatives, when the statute was amended, show that it was the intention of Congress to enlarge the statute by adding a class which had no reference whatever to sexual matters. The general rule is that debates in Congress are not appropriate, or even reliable, guides to the meaning of an enactment. (U. S. v. St. Paul, etc., Ry. Co., 247 U. S. 310, 318.) But it was also held that the reports of a committee, including the bill as introduced, changes made in the framing of a bill in the course of its passage, and statements made by the committee chairman in charge of it, stand upon a different footing, and may be resorted to under proper qualifications. (U. S. v. St. Paul, etc., supra.) It was also held that the remarks of a member offering an amendment in response to an objection urged by a member were in the nature of a supplementary report of the committee and where they relate to matters of common knowledge, might be taken into consideration, not for the purpose of construing it contrary to its plain terms, but in order to remove any ambiguity by pointing out the subject matter of the amendment. (U. S. v. St. Paul, etc., supra. See also Richburg Motors Co. v. U. S., 281 U. S. 528, 536.) I have read very carefully the proceedings in the House when this amendment was adopted, and I do not think that those proceedings necessitate a change in the construction of the statute. It appears from those proceedings that the amendment to the statute was not proposed by the committee but was made from the floor. The committee made no report upon the proposed amendment. The question was before the House on two occasions. Upon the first occasion (42 Cong. Rec. 995, 999) the report of the committee being before the House with the words "obscene, lewd,

41 and lascivious," a member of the committee offered an amendment by adding the words "vile, filthy, or indecent." This amendment provoked considerable opposition. Some appeared to think that the words enlarged the statute, while others were of a contrary opinion. Some were opposed to the amendment if the words could be construed to enlarge the statute. The chairman of the committee stated that he could not accede to the amendment. On the second occasion, when the matter came up before the House (43 Cong. Rec. 283, 284), the member proposing the amendment "vile, filthy, or indecent" withdrew it and offered as a substitute the words "and every filthy." It is true that the member of the committee who proposed the substituted amendment stated that it was the intention to enlarge the statute, and the chairman of the committee finally agreed to the substitution, but the proceedings show that there was considerable doubt whether the amendment would have any effect or not. The chairman of the committee at first stated positively that it would include matter that was merely vulgar, but finally expressed doubt about that. Moreover, it was pointed out that the courts

might hold that the language of the substituted amendment would not enlarge the statute. In this connection it is to be observed also that the case of People v. Eastman (1907) (188 N. Y. 509, 81 N. E. 459) was adverted to, and it was pointed out that the Supreme Court of New York had held that similar words did not enlarge the meaning of the words "obscene, lewd, and lascivious." But it is unnecessary to advert to further details of the proceedings before the House. It is sufficient to say that when the whole proceedings are read carefully, it will be seen that those proceedings afford no safe guide for the construction of this statute. In addition to this, I do not
42 think that there is such ambiguity in the meaning of the word "filthy" as would warrant the court in considering those proceedings, certainly not, unless they evinced a clearer intention than they do. It is perfectly apparent that Congress hesitated to go to the length of making unmailable matter which is merely coarse, vulgar and indelicate, disgusting, or libellous. Moreover, I think that in a criminal case of this sort, of a highly penal nature, a citizen should not be compelled to resort to proceedings in Congress to determine whether a course of action on his part is or is not prohibited by law, when the statute is fairly clear on its face. As was said by the Supreme Court, while it is not likely that a criminal will carefully consider the text of the law, it is reasonable that a fair warning should be given to the world in language that the common world will understand of what the law intends to do if a certain line is passed; and to make the warning fair, so far as possible, the line should be clear. (McBoyle v. U. S., 283 U. S. 25, 27.)

It is argued, however, that Congress must have meant something by the addition of the words under consideration, and that effect must be given to every word of a statute, if possible. It is true that effect must be given if possible to every word in a statute; but if it is not possible without doing violence to the plain meaning of a word, it should not be done. There are only two possible ways to give effect to the word "filthy" in this connection, different from the word "obscene." It might be held that the word "filthy" covers physical, material filthiness, as well as filthiness in relation to language and ideas. I do not think the context permits this, but even if it did, it would not avail the Government here, for there is no contention that the matter here alleged to be non-mailable was filthy in a physical, material sense. The word "filthy" might conceivably be held to include matter which has no relation to sexual matters but would corrupt the morals of the people in other
43 respects. Here, again, I think the context forbids any such construction. But even if such construction be permissible, it would not avail the Government in this case, because while the letters in question are, as has been stated, coarse, vulgar, indelicate, disgusting, and in some instances libellous, nevertheless I can not perceive that they would have any tendency to corrupt morals. They repel rather than incite.

The defendant has called my attention to the case of Dysart v. U. S. (272 U. S. 655). That decision reaffirms the Swearingen case, but I do not think it decisive of the precise point here, because the word "filthy" was not under consideration in that case. It has some persuasive force, however, because it does show that the Swearingen case is still the law so far as it is applicable.

If Congress had intended to change the law announced in the Swearingen case, it could very easily have used appropriate language, and there would have been no doubt about it. In this connection it may be observed that in the very next section (U. S. Code, title 18, sec. 335), in reference to matter upon postal cards or upon envelopes or outside covers or wrappers, Congress has made it clear that not only matters of an "obscene, lewd, or lascivious" nature are embraced within the statute, but also "libellous, scurrilous, defamatory, and threatening" matter is expressly prohibited. Congress could have made it equally clear under section 334, as they have done under Section 335, if that was the intention.

The radio act of February 23, 1927 (44 Stats. 1172; 47 U. S. C. A., sec. 109), forbids the utterance by means of radio communication of any "obscene, indecent, or profane language." The meaning of these words was considered in a very interesting opinion by
44 the Circuit Court of Appeals for the Ninth Circuit, in the case of Duncan v. U. S. (48 Fed. (2d) 128 (cert. denied June 1, 1931); Adv. Ops. 1930–1931, 876). The court refrained from setting forth in haec verba the highly objectionable language which was the subject of the indictment. The court's summary of the language, however, indicates that it was very similar to the language used in the case at bar, though the latter is probably somewhat more objectionable. The court held that while the language used in that case was vulgar, scurrilous, and indecent in the popular sense of the term, it was not obscene or indecent within the meaning of those terms as universally applied in the administration of the criminal law with reference to the use of obscene and indecent language, and that the test was whether or not the language alleged to be obscene would arouse lewd or lascivious thoughts in the minds of those hearing or reading the publications. The court therefore decided that the language in question was not obscene or indecent under that statute; but that certain portions of the language used were profane within its meaning. While this case is not directly in point, nevertheless it is strongly persuasive of the correctness of the conclusion I have reached in the present case.

The Government has called my attention to three cases construing the amended statute. The first case is that of U. S. v. Dempsey (D. C.) (188 Fed. 450). In that case the court stated in substance that it was of opinion that Congress meant by the additional words to enlarge the statute. The court deemed it its duty to submit the letter to the jury. An examination of the contents of the letter in that case shows that a jury might have thought that it was within

the inhibition of the statute as construed in the Swearingen case.

The next case is Tyomies Publishing Co. v. U. S.
45 (C. C. A. 6th) (211 Fed. 385). In that case the court held that the additional words showed it was the purpose of Congress to enlarge the statute, but there was no discussion of the question, and it appeared also that the meaning of the word "filthy" was restricted to what was morally depraving and debasing. While I am extremely reluctant to render a decision at variance with the decision of a Circuit Court of Appeals, nevertheless it is the decision in another circuit and is not binding upon me, and the defendant has a right that I should exercise my own judgment as to the meaning of the statute. I am convinced that Congress never would have amended this statute if it was thought that it would open the door to the prosecution of all kinds of publications which are merely coarse, libellous, indelicate, or disgusting, and I do not think that I should follow the Tyomies decision against my own firm convictions.

The last case is U. S. v. Davidson (D. C.) (244 Fed. 523). This is a long case, and I will not pause to review it in detail. It is sufficient to say that I have read it carefully, and the whole argument and reasoning of the learned judge would indicate that the amendment did not enlarge the statute, and he appears to have resolved his doubts under the influence of the decision of Tyomies Publishing Co. v. U. S. supra, and also because the matter in question might be deemed by a jury to come under the Swearingen case. At any rate, I am not bound by this decision, and if it holds what the Government contends, I am not in accord with it.

The writer of this opinion knows from long years' experience as a prosecuting officer for the Government that many hundreds of cases similar to this have come up for consideration and have occasioned the Post Office Department and prosecuting officers a great
46 deal of trouble in determining whether they should be prosecuted or not in view of the amendment to the statute. Few of such cases have been prosecuted. It is well, therefore, that the question should be decided; and if I am in error, the Government has a remedy by appeal, and the matter can be settled finally and authoritatively.

I am constrained, therefore, to hold that under a proper construction of this statute, the amending words do not add materially to the statute so as to bring within the inhibition of the law the letters set forth in the various counts of the indictment. I will, however, give the Government a certificate that the indictment is held to be bad solely under my construction of the statute, in order that there may be an appeal if the Government be so advised.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

86496—31——3

47 In United States District Court

[Title omitted.]

Order sustaining demurrer to indictment

Filed October 13, 1931

The defendant in the above-entitled case having filed a demurrer to each and every count of the indictment on the ground that the letters set forth in said counts do not come within the statute as amended; and the court having heard argument thereon and taken the matter under advisement and having reached the conclusion, upon a proper construction of the statute, that the said letters are not filthy within the meaning of the statute as amended, as appears by an opinion in said case filed by the court this day,

It is therefore

Ordered, adjudged, and decreed that the indictment herein found by the grand jury at the regular term at Aiken on September 28, 1931, and each and every count thereof, is adjudged not to state an offence against the United States, and to be insufficient in law; and the demurrer thereto be, and the same is hereby, sustained, and said indictment and each and every count thereof quashed.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

Exception

48 Thereupon the district attorney, upon behalf of the Government, duly excepted to said order and ruling, on the ground that the letters and each and every one of them mentioned in said indictment are filthy within the meaning of the statute as amended; which said exception is duly noted and allowed.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

49 In United States District Court

[Title omitted.]

Order granting motion to quash indictment

Filed October 13, 1931

The defendant in the above-entitled case having made a motion to quash each and every count of the indictment on the ground that the letters set forth in said counts do not come within the statute as

amended; and the court having heard argument thereon and taken the matter under advisement and having reached the conclusion, upon a proper construction of the statute, that the letters are not filthy within the meaning of the statute as amended, as appears by an opinion in said case filed by the court this day,

It is therefore

Ordered, adjudged, and decreed that the said motion to quash said indictment and each and every count thereof be and the same is hereby granted, and each and every count of said indictment be and the same is hereby quashed.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

Exception

Thereupon the district attorney, upon behalf of the Govern-
50 ment, duly excepted to said order and ruling on the ground that the letters and each and every one of them mentioned in said indictment are filthy within the meaning of the statute as amended; which said exception is duly noted and allowed.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

51 In United States District Court

[Title omitted.]

Certificate of presiding judge

Filed October 13, 1931

It is hereby certified that the orders and judgments in the above-entitled case made and entered this day sustaining the demurrer to said indictment and each and every count thereof, and granting the motion to quash the same were based entirely upon a construction of the law and not on any defect in the indictment itself or any count thereof; it being my opinion that the addition of the word "filthy" added by the amendment dated March 4, 1909 (35 Stat. at L., ch. 321, sec. 211, p. 1129) to the words in the original statute (R. S. section 3893) did not materially add to or extend the meaning of the original statute, and that the letters embraced in said indictment do not come within the purview of the statute as amended.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

52 In United States District Court

[Title omitted.]

Bill of exceptions

Filed October 13, 1931

Be it remembered that on the 28th day of September, 1931, at a regular term of the United States District Court for the Eastern District of South Carolina, begun and holden at Aiken, S. C., the grand jury returned an indictment against the defendant, O. B. Limehouse, for violation of section 334, title 18, U. S. Code; and thereupon the defendant in said case appeared and filed a demurrer to each and every count of said indictment, and also made a motion to quash the same; and thereupon the court, having heard the parties, took the matter under advisement; and thereupon on the 13th day of October, 1931, at a regular term of said court begun and holden at Charleston, S. C., the court filed an opinion and an order and decision declaring the said indictment and each and every count thereof insufficient and stating no offence against the United States and quashing the same on the ground that the letters set forth therein were not filthy within the meaning of the statute as amended; to which ruling the district attorney on behalf of the Government then and there duly excepted on the ground that the letters set forth in said indictment were filthy within the meaning of the statute as amended; which exception was then and there duly noted and allowed.

ERNEST F. COCHRAN,
U. S. District Judge.

OCTOBER 13, 1931.

53 In United States District Court

[Title omitted.]

Assignment of errors.

Filed Nov. 4, 1931

Comes now the United States of America, by Henry E. Davis, United States attorney in and for the Eastern District of South Carolina, and in connection with its appeal makes the following assignment of errors:

1. The District Court erred in sustaining the demurrer to the indictment.

2. The District Court erred in granting the motion to quash the indictment.

3. The District Court erred in construing the word "filthy," as used in section 211 of the Criminal Code, as not including within its meaning the letters set forth in the indictment.

Dated October 31, 1931.

THE UNITED STATES OF AMERICA,
By its Attorney,
HENRY E. DAVIS,
United States Attorney.

54 In United States District Court

[Title omitted.]

Petition for appeal

Filed Nov. 4, 1931

Comes now the United States of America, plaintiff in the above-entitled cause, by Henry E. Davis, United States attorney in and for the Eastern District of South Carolina, and conceiving itself aggrieved by the orders entered in this cause on October 13, 1931, sustaining a motion to quash and a demurrer to the indictment and each and every count thereof, prays that an appeal may be allowed from said orders to the Supreme Court of the United States, and in connection with this petition the United States presents herewith its assignment of errors.

Dated October 31, 1931.

UNITED STATES OF AMERICA,
By its Attorney,
HENRY E. DAVIS,
United States Attorney.

Order allowing appeal

Appeal allowed this 4 day of November, 1931.

ERNEST F. COCHRAN,
United States District Judge.

55 [Citation in usual form showing service on Jno. P. Grace, filed Nov. 4, 1931, omitted in printing.]

56 In United States District Court

[Title omitted.]

Stipulation

Filed Nov. 5", 1931

It is hereby stipulated and agreed, by and between the parties to the above entitled cause, that the record on appeal to the United

States Supreme Court in said cause shall consist of the following-described papers, to wit:

Indictment.
Demurrer.
Motion to quash.
Opinion of district judge.
Order sustaining demurrer.
Order granting motion to quash.
Certificate of district judge.
Bill of exceptions.
Assignments of error.
Petition for appeal.
Order allowing appeal.
Citation.

HENRY E. DAVIS,
United States Attorney.
JOHN P. GRACE,
Attorney for O. B. Limehouse, alias Bossy Limehouse.

57 [Clerk's certificate to foregoing transcript omitted in printing.]

58 In the Supreme Court of the United States

Statement of points upon which the appellant relies and designation to print entire record

Filed Nov. 13, 1931

Pursuant to rule 13 of this court appellant specifies the following as the point upon which it intends to rely in the above-entitled cause:

The word "filthy," as used in section 211 of the Criminal Code, includes within its meaning the letters set forth in the indictment.

The entire record as filed should be printed.

THOMAS D. THACHER,
Solicitor General.

NOVEMBER 13, 1931.

[File endorsement omitted.]

[Endorsement on cover:] Enter Attorney General. File No. 36327. E. South Carolina, D. C. U. S. Term No. 513. The United States of America, appellant, vs. O. B. Limehouse. Filed November 11, 1931. File No. 36327.

U. S. GOVERNMENT PRINTING OFFICE: 1931

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 513

THE UNITED STATES, APPELLANT

v.

O. B. LIMEHOUSE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the orders here complained of is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), other-

wise known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

B

DATES OF ORDERS AND APPLICATION FOR APPEAL

The orders of the District Court were entered October 13, 1931. (R. 47–50.)[1] An application for appeal was filed November 4, 1931, and allowed the same day. (R. 54.) The case was docketed in this Court on November 11, 1931.

C

NATURE OF THE CASE

The indictment, containing thirty counts, was based upon Section 211 of the Criminal Code (U. S. C., Title 18, Sec. 334), and charges in each count the mailing of "a certain filthy letter and writing" which is set forth *in haec verba* (R. 2–34). A demurrer and a motion to quash the indictment were sustained on the ground that the word "filthy," as used in Section 211 of the Criminal Code, did not include the letters set forth in the indictment. (R. 35–52.)

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[1]All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court and on file with the Clerk of this Court. The record has not yet been printed.

D

CASES SUSTAINING JURISDICTION

United States v. *Patten*, 226 U. S. 525, 535.

United States v. *Birdsall*, 233 U. S. 223, 230.

United States v. *Colgate & Co.*, 250 U. S. 300.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

NOVEMBER, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

FILE COPY

No. 512

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Specification of errors to be urged	5
Summary of argument	5
Argument	6
Conclusion	19
Appendix A (statutes)	20
Appendix B (dictionary definitions)	25
Appendix C (legislative history)	27–35

CITATIONS

Cases:

Anderson v. *Patten*, 247 Fed. 382	16
Ash Sheep Co. v. *United States*, 252 U. S. 159	17
Bird v. *United States*, 187 U. S. 118	18
Clark v. *Barnard*, 108 U. S. 436	18
Commonwealth v. *Herald Publishing Co.*, 32 Ky. L. Rep. 1293	8
Commonwealth v. *Magid*, 91 Pa. Superior Ct. 513	8
Donnelley v. *United States*, 276 U. S. 505	17
Duncan v. *United States*, 48 F. (2d) 128, certiorari denied, 283 U. S. 863	16
Dysart v. *United States*, 272 U. S. 655	15
Federal Trade Commission v. *Western Meat Co.*, 272 U. S. 554	17
Kinnaird v. *Commonwealth*, 134 Ky. 575	8
Mason v. *United States*, 260 U. S. 545	17
Mid-Northern Co. v. *Montana*, 268 U. S. 45	17
People v. *Brainard*, 183 N. Y. Supp. 452	8
People v. *Eastman*, 188 N. Y. 478	8
Regina v. *Wood*, 5 El. & Bl. 419	8
Richbourg Motor Co. v. *United States*, 281 U. S. 528	14
Rosen v. *United States*, 161 U. S. 29, 42–43	7
Swearingen v. *United States*, 161 U. S. 446	5, 8, 13, 16, 17
Tyomies Publishing Co. v. *United States*, 211 Fed. 385	15
United States v. *Alford*, 274 U. S. 264	17
United States v. *Davidson*, 244 Fed. 523	15
United States v. *Dempsey*, 188 Fed. 450	15

Cases—Continued. Page

United States v. Journal Co., 197 Fed. 415 16
United States v. Kennedy, 209 Fed. 119 16
United States v. Kissler, 220 Fed. 601 16
United States v. Mersell, 215 U. S. 26 18
United States v. Sprague, 282 Fed. 419 8
United States v. St. Paul M. & M. Ry. Co., 247 U. S. 310 14
United States v. Thind, 261 U. S. 204 7
Unity v. Burrage, 103 U. S. 447 18

Statutes:

Revised Statutes, sec. 5908 23
Act of June 18, 1898, c. 304, 29 Stat. 187 18
Act of September 26, 1888, c. 1039, 25 Stat. 496 18, 24
Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 20
Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129, 1133—
Sec. 211 20
Sec. 212 22
Sec. 245 7
Food and Drugs Act of June 30, 1906, c. 3915, 34 Stat. 768 8
Act of March 4, 1911, c. 241, sec. 2, 36 Stat. 1327, 1339 22
Act of January 31, 1923, c. 14, 42 Stat. 54 20
Act of April 26, 1928, c. 440, 45 Stat. 466 20

Congressional Documents:

Congressional Record—
Vol. 42, pt. 1, pp. 539-542, 554 11
Vol. 42, pt. 1, pp. 995-999 13
Vol. 42, pt. 1, p. 995 12
Vol. 42, pt. 3, pp. 2891-2892 13
Vol. 43, pt. 1, pp. 253-254 27
Vol. 43, pt. 1, p. 254 29
Vol. 42, pt. 3, pp. 2635, 2642 7, 32
Vol. 42, pt. 4, pp. 3317-3318 32
House Rep. No. 2, pt. 1, p. 3, p. 22, 60th Cong., 1st sess., Cong. Doc. 5225 10, 11
Sen. Rep. No. 10, pt. 1, p. 22, pt. 2, p. 230, "Sec. 212," 60th Cong., 1st sess., Cong. Doc. 5230 11
Sen. Doc. No. 63, pt. 2, p. XVI, Cong. Docs. 4227 and 4228, 57th Cong., 1st sess., Sen. Docs., Vols. 9 and 10 10
Final Report, 1906, of U. S. Commission to Revise the Laws, Vol. 1, p. 107, under Sec. 5045, Vol. 2, p. 1313 11

Miscellaneous:

Abbott's Federal Crim. Law (4th ed.), pp. 260-261 15
Century Dictionary and Cyclopedia (1911), vol. 4 25
Standard Dictionary (1894), vol. 1 25
Webster's New International Dictionary (1919) 26
Letter from Postmaster General to Chairman, Committee on Revision of the Laws, December 28, 1906 33

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 513

THE UNITED STATES OF AMERICA, APPELLANT,

v.

O. B. LIMEHOUSE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 26–31) has not been reported.

JURISDICTION

The orders of the District Court sustaining a demurrer and a motion to quash the indictment were entered October 13, 1931. (R. 32–33.) A petition for a direct appeal to this Court was filed and allowed November 4, 1931. (R. 35.) The jurisdiction of this Court to entertain the appeal is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), commonly known as the Criminal Appeals Act, and by Sec-

tion 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (p. 20, *infra*).

QUESTION PRESENTED

Whether it should be held, as a matter of law, that letters containing language which is coarse and vulgar, charging the addressees and persons associated with them with disgusting immorality, but which does not tend to corrupt the minds or morals of persons into whose hands they fall, are not "filthy" within the meaning of Section 211 of the Criminal Code, making it an offense to deposit in the mails matter which the section declares to be nonmailable.

STATUTES INVOLVED

Section 211 of the Criminal Code (U. S. C., Title 18, Sec. 334), so far as material, provides:

> Every obscene, lewd, or lascivious, and every filthy, book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character * * * is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post-office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

In Appendix A, pp. 20–24, *infra*, we copy this entire section and also other provisions of the statutes which may be considered in determining its construction.

STATEMENT

The appellee was indicted in the District Court for violations of Section 211 of the Criminal Code. The indictment contains thirty counts. (R. 1–24.) Each count charges that he

> unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, in a certain post office of the United States * * * then and there well knowing the envelope to contain the said letter and writing as aforesaid, and well knowing the said letter to be filthy as aforesaid.

Each count sets forth *verbatim* a separate letter. There were twenty-seven different addressees, some being men and some being women. Apparently all of them were political opponents of the appellee, who were associated with an organization referred to as "D. R. L."[1] The motive for sending the letters appears in the assertions in the letters that the D. R. L. "stole the election," and that the addressees were sympathetic with the prosecution of one Grooms, whose cause the appellee espoused. The letters contain threats, some of which might be

[1] We understand that these letters stand for "Dorchester Reform League." Dorchester is a county in South Carolina.

construed as threats of violence, and accuse some of the addressees and others of being murderers and thieves.

The letters also contain torrents of foul language, charging the addressees and persons related to or associated with them with sexual immorality, sometimes in general terms, sometimes with specific persons, and sometimes promiscuously. They also contain, in the vernacular, reflections upon the parents and children of the addressees and others and allege that the addressees have been guilty of miscegenation and similar practices.

Nineteen of the letters are alleged to have been mailed at Charleston, South Carolina, on May 21, 1929, and eleven at Summerville, in Dorchester County, South Carolina, on June 20, 1929.

Appellee filed a demurrer to the indictment and a motion to quash it on the ground that none of the counts thereof charged an offense under Section 211 of the Criminal Code. (R. 25.)

The District Court entered orders sustaining the demurrer and granting the motion to quash. It certified that these orders were "based entirely upon a construction of the law and not on any defect in the indictment itself or any count thereof." (R. 32–33.)

The court characterized the language of the letters set forth in the indictment as "coarse," "vulgar," "indelicate," "disgusting," and said "some of it is plainly libellous, and some possibly indecent, but it does not tend to corrupt the morals of

the people in relation to sexual matters." (R. 26–27, 29.) It held that the word "filthy," as used in Section 211 of the Criminal Code, covered only matter which tended to induce sexual immorality.

SPECIFICATION OF ERRORS TO BE URGED

1. The District Court erred in sustaining the demurrer to the indictment.

2. The District Court erred in granting the motion to quash the indictment.

3. The District Court erred in construing the word "filthy," as used in Section 211 of the Criminal Code, as not including within its meaning the letters set forth in the indictment.

SUMMARY OF ARGUMENT

We submit that each count of the indictment charges the appellee with a crime. The only question is whether it should be held as a matter of law that the letters set forth in the indictment are not "filthy" within the meaning of Section 211 of the Criminal Code.

The word "filthy" seems to have no special meaning in law, and it should be construed in its ordinary sense, "nasty, disgustingly dirty, foul, impure, obscene."

Section 211 of the Criminal Code took the place of Section 3893 of the Revised Statutes. Section 3893 did not contain the word "filthy," but declared that every "obscene, lewd, or lascivious" writing should be nonmailable. In *Swearingen* v.

United States, 161 U. S. 446, this Court held that language similar to that here involved was not "obscene, lewd, or lascivious" within the meaning of Section 3893, as those words "have the same meaning as is given them at common law in prosecutions for obscene libel." Apparently the test which it laid down was whether the language was calculated to corrupt the minds and morals of those into whose hands the writing might fall.

After that decision Congress, apparently with the specific purpose of amending the statute so as to prohibit the very kind of thing which was held not to be within the scope of the statute in the *Swearingen* case, inserted the word "filthy." The word so inserted should not be construed so as to make the action of Congress vain or senseless.

ARGUMENT

The letters set forth in the indictment are not calculated to corrupt the minds or morals of those in whose hands they fall. But they abound in vile epithets and wholesale, as well as specific, charges of disgusting immorality. Each count of the indictment alleges that the letter therein set forth is "filthy." We submit that each count charges the appellee with a crime and that it is not subject to a demurrer or motion to quash. The only question is whether the District Court was right in holding that, as a matter of law, such letters could not be considered "filthy."

We submit that the court erred, and indeed that in a trial the court should instruct the jury that

each letter is filthy. See *Rosen* v. *United States*, 161 U. S. 29, 42–43.

The word "filthy" seems to have no special meaning in the law. Apparently it occurs in but few statutes, and we have found no helpful discussions as to its meaning in statutes other than the section here involved.[2] The word "filthy" is a word of common speech and should be given its ordinary meaning as understood by the common man. Cf. *United States* v. *Thind*, 261 U. S. 204, 209. The ordinary man would, we believe, regard the letters which the appellee sent as filthy. The dictionaries include among the usual meanings of the word "filthy"—"nasty, disgustingly dirty, foul, impure, obscene." (See Appendix B, pp. 25–26, *infra*.)

Perhaps an even more compelling reason for regarding the word as including the language in question is furnished by the legislative history of this section of the Criminal Code.

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[2] We have found but two other Federal statutes in which the word "filthy" is used. Section 245 of the Criminal Code (35 Stat. 1138, U. S. C., Title 18, Sec. 396) punishes the importation and interstate transportation of "any obscene, lewd, or lascivious, or any *filthy*, book, pamphlet," etc. This section amended earlier statutes by adding the words "or any filthy." The legislative history of this amendment is similar to that of Section 211 of the Criminal Code, the statute involved in the instant case, and shows that the words referred to were inserted in order that the language of the section should conform to that of Section 211. (Cong. Rec., Vol. 43, pt. 3, p. 2585.) No case construing the word "filthy" appears to have arisen under Section 245. The

Section 211 of the Criminal Code took the place of Section 3893 of the Revised Statutes (pp. 23–24, *infra*) which declared that "every obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, or other publication of an indecent character" should be nonmailable, etc.* It did not contain the word "filthy." In *Swearingen* v. *United States*, 161 U. S. 446, decided March 9, 1896, this Court, with four justices dissenting, treated the phrase "obscene, lewd, or lascivious," as stating but one

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only other Federal statute using the word "filthy" which we have found is the Food & Drugs Act of June 30, 1906, c. 3915, 34 Stat. 768, 770. Section 7, paragraph 6, of that Act (U. S. C., Title 21, Sec. 8) provides that an article of food shall be deemed "adulterated" within the meaning of the Act if it consists of a "*filthy*, decomposed, or putrid animal or vegetable substance," etc. Here it is obvious the word "filthy" refers to a physical condition. See *United States* v. *Sprague*, 208 Fed. 419, 421 (E. D., N. Y.). An instance of the use of the word "filth" in reference to a physical condition is found in the English statute referred to in *Regina* v. *Wood*, 5 El. & Bl. 49, which gave the board of health power to make by-laws compelling the occupiers of premises to remove all "dust, ashes, rubbish, *filth*, manure, dung, and soil."

We know of but four States in which the statutes covering obscene writings contain the word "filthy"—Iowa, Pennsylvania, New York, and Kentucky. There are but few decisions construing these statutes. While those we have found construe the statutes narrowly, they do not specifically discuss the meaning of the word "filthy." See *People* v. *Eastman*, 188 N. Y. 478 (1907); *People* v. *Brainard*, 183 N. Y. Supp. 452 (1920); *Commonwealth* v. *Herald Publishing Co.*, 32 Ky. L. Rep. 1293 (1908); *Kinnaird* v. *Commonwealth*, 134 Ky. 575 (1909); *Commonwealth* v. *Magid*, 91 Pa. Superior Ct. 513 (1927).

*By an amendment approved September 26, 1888, c. 1039, 25 Stat. 496, "letters" were specifically included within the purview of the statute.

and the same offense, and said that these words signified "that form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel." It therefore held that the statute did not punish the mailing of a newspaper article, the language and tone of which were similar to those of the letters here involved. The Court said that the article did not contain "anything of a lewd, lascivious, and obscene tendency, calculated to corrupt and debauch the mind and morals of those into whose hands it might fall."

The law stood thus until March 4, 1909, when Congress, in enacting the Criminal Code (c. 321, 35 Stat. 1088, 1129), added to the words "obscene, lewd, or lascivious" the words "and every filthy," so that the statute thereafter read, "Every obscene, lewd, or lascivious, and every filthy, book," etc., shall be nonmailable, etc. (For the full text of Section 211, see pp. 20–22, *infra*.)

To solve the question presented here it is important to ascertain what Congress intended to accomplish by the amendment of 1909.

About a year after the *Swearingen* case was decided, a commission was appointed by the President, pursuant to an Act of Congress, to revise and codify the criminal and penal laws of the United States. This commission was directed to make a report of its conclusions to Congress, through the Attorney General. On May 15, 1901, it submitted a proposed Penal Code, together with a report in

which it said with reference to the statute under discussion:

> Section 185, "Obscene, etc., matter nonmailable:" In construing the act of September 26, 1888, amendatory of section 3893, Revised Statutes, the Supreme Court of the United States, in the case of *Swearingen* v. *United States* (161 U. S. 446), decided that "the words 'obscene,' 'lewd,' and 'lascivious,' as used in the statute, signified that form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel." In that case language of gross indecency was held not to be "calculated to corrupt and debauch the minds and morals of those into whose hands it might fall" so as to come within the terms of the law. In the light of this decision, and to prevent a flagrant abuse of the mails, we have added the words "indecent, vile, or filthy," in the revision of the sections mentioned. [Senate Doc. No. 68, Pt. 2, p. XVI, Cong. Docs. 4227, 4228, 57th Congress, 1st Sess., Senate Documents, Vols. 9, 10.][1]

The duties of the commission had meanwhile been extended to embrace the revision and codification of all the general and permanent laws of the United States. (House Report No. 2, Pt. 1,

[1] The statute, revised to read as suggested by the commission, appears at page 60 of the proposed penal code. This code immediately follows the commission's report in the congressional document.

p. 2, 60th Cong., 1st Sess., Cong. Doc. 5225.) On December 15, 1906, the commission rendered a final report to Congress, which, in so far as it related to the statutory provisions in question, was identical with its earlier report. (Final Report, 1906, U. S. Commission to Revise the Laws, Vol. 1, p. 107, under Sec. 8845; Vol. 2 (proposed bill), p. 1813.)

The commission then went out of existence. (House Report No. 2, Pt. 1, p. 2, 60th Cong. 1st Sess., Cong. Doc. 5225, *supra*.) A joint committee of the House and Senate was appointed to examine, consider, and submit to Congress recommendations with reference to the revision and codification prepared by the commission. This committee, during the first session of the Sixtieth Congress, submitted to each House a proposed penal code. This draft, in describing nonmailable matter, contained the phrase "obscene, lewd, or lascivious," without addition or change. The report which accompanied this draft made no recommendation of a change in that provision. (Senate Report No. 10, Pt. 1, p. 22, Pt. 2, p. 230, "Sec. 212," 60th Cong., 1st Sess., Cong. Doc. 5220; House Report No. 2, Pt. 1, p. 22, 60th Cong., 1st Sess., Cong. Doc. 5225.)

The proposed code was considered in each House sitting as in Committee of the Whole. (Cong. Rec., Vol. 42, Pt. 1, pp. 539–542; id. p. 564.)

When the section of the bill which later became Section 211 of the Criminal Code was reached for consideration in the House, Mr. Houston, who,

though a member of the joint committee, was not then acting on its behalf, moved to amend the section by striking out the word "or" before the word "lascivious" and by adding after that word the words "vile, filthy, or indecent." In offering this amendment, its sponsor said—

> the object of this amendment is to cure a defect that I think exists in the present law. Under the decision of the Supreme Court it has been held that these terms "obscene, lewd, or lascivious" refer only to sexual impurities or matters pertaining thereto. Now, there are a great many vile, filthy, and indecent articles not relating to that subject that are transmitted through the mails. We, the committee, have had these things before us, and we have had the information from the Department as to the character of many things not inhibited by existing law. Many of them are not covered by these words, but they ought to be prohibited and they will be by this amendment. [Cong. Rec., Vol. 42, pt. 1, p. 995.]

The Chairman of the House Committee on Revision of the Laws, Mr. Moon, who appears to have been spokesman for the joint committee in the House, refused to accept the amendment, his principal objection being directed against the use in the amendment of the word "indecent." He explained that while the committee did not object to enlarging the scope of the statute, it felt that the insertion of the word "indecent" in the statute might open up too broad a field for construc-

tion by the Post Office Department and the courts. Another member of the committee expressed similar views. Action on the amendment was temporarily deferred. (Cong. Rec., Vol. 42, pt. 1, pp. 995–999.)

An amendment similar in character, but which contained the word "disgusting" instead of the word "indecent," was offered in the Senate. After little debate, it was rejected. (Cong. Rec., Vol. 42, pt. 3, pp. 2391–2392.)

When the proposed amendment was later considered in the House, in place of the suggested words "vile, filthy, or indecent," the words "and every filthy" were inserted, and the bill as so amended ultimately became law. In the House, Mr. Houston and Mr. Moon both discussed the meaning of the word "filthy" at some length. (The relevant extracts from the debate, with other material bearing upon the understanding of Congress as to the meaning of that word, are printed in Appendix C, pp. 27–35, *infra*.) In the course of this debate Mr. Houston said that the word "filthy" referred to the character of the publication, and Mr. Moon stated that the general meaning of the word was "nasty, dirty, filthy, vile, and impure." Although the statements are not as explicit as might be desired, it would appear from the discussion that Congress intended to make nonmailable such language as that involved in the *Swearingen* case, at least. The language there involved was, as we have stated, similar to that here involved, although that here involved is even more offensive.

Under the circumstances, it would seem to be admissible to look to the statements of Mr. Moon and Mr. Houston to determine the meaning of the word "filthy." See *Richbourg Motor Co.* v. *United States*, 281 U. S. 528, 536; *United States* v. *St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318.

The amendment adding the words "and every filthy" was offered in the House sitting as in Committee of the Whole House, and was adopted by that committee. We are advised by the Parliamentarian of the House that the practice in such cases is for the chairman of the Committee of the Whole House to report orally approval of the bill as amended in the committee to the Speaker. No written committee report is made. The bill is thereupon placed upon the House Calendar to be voted upon without further debate. Under such circumstances it is obvious that the only source of information as to the legislative intent is the discussion which takes place when the measure is introduced and considered in the Committee of the Whole House. As the amendment involved in the instant case was accepted on behalf of the Committee on the Revision of the Laws by its chairman, the statements made by him, as well as by the sponsor of the amendment, would seem to be proper sources of information as to the congressional intent.

Apparently the only case under Section 211, except the instant case, in which the application of

the word "filthy" to language similar to that here involved has been passed upon is *United States* v. *Davidson,* 244 Fed. 523 (N. D. N. Y.), in which the court overruled a demurrer to the indictment and held that the question whether the language was "filthy" should be left to the jury. The word "filthy" in this statute has been given a broad construction in the only other cases in which its meaning has been expressly considered, *Tyomies Publishing Co.* v. *United States,* 211 Fed. 385 (C. C. A. 6th), and *United States* v. *Dempsey,* 188 Fed. 450 (E. D. Ark.). See also Atwell's Federal Criminal Law (Fourth Ed.), pp. 260–261.

In *Dysart* v. *United States,* 272 U. S. 655, (which the court below regarded as having "some persuasive force"), this Court held that letters advertising a home for the care and protection of pregnant unmarried women and their infants were not "obscene, lewd or lascivious," within Section 211, Criminal Code, even when mailed, without excuse, to refined women. It appears from the report of the case that the Solicitor General stated: "It is not * * * easy to believe that circulars of this kind could to any substantial degree undermine morals or induce delinquency." But the indictment there did not charge that the letters were "filthy," and the meaning and effect of that word were not considered either by the Solicitor General or by the Court.

Distinguishable on similar grounds is *United States* v. *Journal Co.*, 197 Fed. 415, 416, 418 (E. D. Va.). See also *United States* v. *Kennerley*, 209 Fed. 119, 120 (S. D. N. Y.); *United States* v. *Klauder*, 240 Fed. 501, 502 (N. D. N. Y.); *Anderson* v. *Patten*, 247 Fed. 382, 383 (S. D. N. Y.).

The court below relied to some extent upon the case of *Duncan* v. *United States*, 48 F. (2d) 128 (C. C. A. 9th), certiorari denied, 283 U. S. 863. In that case the Circuit Court of Appeals held that an indictment under the Radio Act of 1927 was bad in so far as it charged that certain language, somewhat similar to that used by the appellee in the instant case, which had been transmitted by a radio broadcasting station, was "obscene and indecent." The court said that the test to be applied was whether the language in question would arouse lewd or lascivious thought in the minds of those hearing it. It seems to us that this test is too narrow. The conviction was, however, upheld on the ground that the language was "profane" within the meaning of the Radio Act, and, of course, the question as to the meaning of the words "obscene and indecent" was not involved in the petition for certiorari. The word "filthy" does not occur in the Radio Act.

In the instant case the District Court held that the word "filthy" has no broader meaning than the word "obscene" and that as this Court in the *Swearingen* case ascribed to the word "obscene," as used in the original statute, the restricted mean-

ing of the words "lewd and lascivious," the word "filthy" should likewise be restricted. But we submit that this does not follow, inasmuch as the word "filthy" did not form a part of the original statute but was inserted therein by an amendment enacted after the decision in the *Swearingen* case. Two rules of construction appear to have influenced the majority of the Court in the decision of the *Swearingen* case—the doctrine of *noscitur a sociis* and the rule that penal statutes are to be strictly construed.

These rules are not applicable in the instant case. As this Court said in *Donnelley* v. *United States*, 276 U. S. 505, 512:

> The rule that penal statutes are to be strictly construed in favor of persons accused is not violated by allowing the language to have its full meaning where that construction is in harmony with the context and supports the policy and purposes of the enactment.

And rules like the doctrine of *noscitur a sociis* are but aids to construction and should not be allowed to defeat the purpose of a statute. See *United States* v. *Alford*, 274 U. S. 264, 267; *Mid-Northern Co.* v. *Montana*, 268 U. S. 45, 49; *Mason* v. *United States*, 260 U. S. 545, 554; *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 170. When Congress, through amendatory legislation, attempts to change a prior legislative policy, its will should be carried into effect if the language used may fairly be construed as expressing the Congressional intent. See *Fed.*

Trade Commission v. *Western Meat Co.*, 272 U. S. 554, 559; *Bird* v. *United States*, 187 U. S. 118, 124; *Unity* v. *Burrage*, 103 U. S. 447, 457. An amendment to a statute should not be treated as vain or senseless if it is possible to avoid such a result. See *Clark* v. *Barnard*, 108 U. S. 436, 460–461; *United States* v. *Mescall*, 215 U. S. 26, 32.

The court below alluded to the fact that the language of Section 211 is narrower or, at least, less specific than that of Section 212 (p. 22, *infra*), which declares certain matter upon an envelope or a wrapper or a postal card nonmailable. The adjectives defining such nonmailable matter, such as "scurrilous, defamatory, or threatening" would, of course, include the language used by the appellee beyond peradventure of a doubt. But it may be admitted that these terms are broader and more specific than "filthy" without conceding that the word "filthy" does not describe the language of the appellee's letters. Language may be "filthy" without being "scurrilous, defamatory, or threatening," and it may be "scurrilous, defamatory, or threatening" without being "filthy." Section 212 originated in the Act of June 18, 1888, c. 394, 25 Stat. 187, which was amended by the Act of September 26, 1888, c. 1039, 25 Stat. 496.

CONCLUSION

We submit that the orders sustaining the demurrer and granting the motion to quash the indictment should be reversed.

Respectfully submitted.

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NUGENT DODDS,
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FEBRUARY, 1932.

APPENDIX A

STATUTES

Act of March 2, 1907, c. 2564, 34 Stat. 1246 (continued in effect by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938):

> CHAP. 2564. An Act Providing for writs of error in certain instances in criminal cases.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.
>
> * * * * *

The statutes abolishing writs of error and providing for the procedure in appeals substituted for them are the Act of January 31, 1928, c. 14, 45 Stat. 54, and the Act of April 26, 1928, c. 440, 45 Stat. 466.

The Act of March 4, 1909 c. 321 (Criminal Code), 35 Stat. 1088, 1129:

> SEC. 211. Every obscene, lewd, or lascivious, and every filthy, book, pamphlet, pic-

ture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or from whom, or by what means any of the hereinbeforementioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be, used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post-office or by any

letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

SEC. 212. All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any post-office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster-General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable matter, or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

The Act of March 4, 1911, c. 241, Sec. 2, 36 Stat. 1327, 1339, amended Section 211 of the Criminal Code by adding thereto the following sentence:

> The term "indecent" within the intendment of this section shall include matter of a character tending to incite arson, murder, or assassination.

Section 3893, Revised Statutes (2d ed.):

> Every obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of an indecent character, and every article or thing designed or intended for the prevention of conception or procuring of abortion, and every article or thing intended or adapted for any indecent or immoral use, and every written or printed card, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or of whom, or by what means, any of the hereinbefore mentioned matters, articles or things may be obtained or made, and every letter upon the envelope of which, or postal card upon which, indecent, lewd, obscene, or lascivious delineations, epithets, terms, or language may be written or printed, are hereby declared to be non-mailable matter, and shall not be conveyed in the mails, nor delivered from any post-office nor by any letter carrier; and any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be non-mailable matter, and any person who shall knowingly take the same, or cause the same to be taken, from the mails, for the purpose of circulating or disposing of, or of aiding in the cir-

culation or disposition of the same, shall be deemed guilty of a misdemeanor, and shall for each and every offence be fined not less than one hundred dollars nor more than five thousand dollars, or imprisoned at hard labor not less than one year nor more than ten years, or both, at the discretion of the court. And all offences committed under said original section thirty-eight hundred and ninety-three of the Revised Statutes prior to the approval of this act may be prosecuted and punished under the said original section in the same manner and with the same effect as if this act had not been passed.

The Act of September 26, 1888, c. 1039, 25 Stat. 496, amended Sec. 3893, R. S., by including "letters" within the purview of the section.

APPENDIX B

DICTIONARY DEFINITIONS OF WORDS "FILTHY" AND "FILTH".

Standard Dictionary of the English Language (1894), Vol. 1:

Filth, filth, n. 1. Anything that soils or makes foul; that which is foul or dirty; also, the state or quality of being foul; nastiness; dirt.

2. Anything that defiles or makes impure the spiritual nature; moral defilement; obscenity.

3. A low fellow.

Filthy. 1. Of the nature of or containing filth; dirty; nasty; hence, vitiated by contact with impurity; morally unclean or depraved; foul; obscene; as, a *filthy* street; *filthy* tastes.

The Century Dictionary and Cyclopedia (1911), Vol. 4:

Filth. *n.* 1. Anything that soils or defiles; foul, offensive matter; also, the state of being defiled; a foul condition; squalor; nastiness.

2. Anything that sullies or befouls the moral character; pollution; defilement.

Syn. 2. Impurity, grossness, obscenity.

Filthy. *a.* 1. Containing or involved in filth; foul; dirty; noisome; nasty.

3. Low; scurvy; contemptible; mean.

Syn. 1. *Dirty, Foul,* etc. (see *nasty*); squalid.—2. Impure, corrupt, gross.

Webster's New International Dictionary (1919):

Filth. n. 1. State or quality of being foul; foul treatment. *Obs.*

2. Foul matter; anything that soils or defiles disgustingly; repulsive dirt; nastiness.

3. Anything that sullies or defiles the moral character; moral defilement or transgression; corruption.

Filthy. a. 1. Defiled with filth, whether material or moral; nasty; disgustingly dirty; polluting; foul; impure; obscene.

Syn. Squalid, unclean, sluttish, gross, licentious. See dirty.

APPENDIX C

DISCUSSION IN CONGRESS WHEN AMENDMENT CONTAINING WORDS "AND EVERY FILTHY" WAS CONSIDERED AND LETTER OF POST OFFICE DEPARTMENT INDICATING CLASS OF MATTER IT DESIRED CONGRESS TO EXCLUDE FROM MAIL

When the amendment containing the words "vile, filthy, or indecent" was considered for a second time in the House (see p. 13, *supra*), the chairman of the House Committee on Revision of the Laws, Mr. Moon, made the following statement (Cong. Rec. Vol. 43, Pt. 1, pp. 283–284):

> The section of law under consideration is that under postal provisions repecting mailable matter; it has particular reference to that which is of an unmailable character and which is designated under existing law as "obscene, lewd, or lascivious." For a number of years after that law was passed there seemed to be no difficulty about its enforcement and about its general application. The courts had defined these words. They had defined the word "obscene" as meaning one kind of objectionable matter. They had defined it as applying to material that went through the mail that was of a coarse or vulgar or indecent character, and they had defined the other two words, "lewd or lascivious," as relating to matters having reference to sexual impurity. But in 1896 the Supreme Court, in a noted case, limited the

meaning of all of those words in existing law—"obscene, lewd, and lascivious"—limited them in their application to publications relating to sexual impurity.

The pending amendment seeks to create another class of publications that shall be excluded from the mail—a class which is vile and filthy, but having no relation whatever to sexual impurity. That is the character of the pending amendment. At the time of the suspension of our consideration I had objected to the word that had been offered as an amendment to designate this class—that is, the word "indecent." The pending amendment adds the words "vile, filthy, or indecent." I had objected, and it had been objected to by other members on the ground that the word "indecent" is of too broad a signification; that it might be construed not to mean simply immodest, and it might be differently construed by different people. It might be construed, and probably would be, as, and, indeed, that is one of its synonyms, simply as indelicate, and as chairman of the committee I opposed the amendment including that word because it would give to Postmasters-General and judges too great a power in using their individual sense and judgment of what would be indecent to exclude from the mail what has heretofore been mailable matter, and in the conviction of persons charged with a violation of this section.

Now, I have been informed by the gentleman from Tennessee [Mr. HOUSTON], who offers the amendment, that he is also of that conviction; that he has a proposition to make respecting an amendment of his amendment. Therefore I will leave the floor to the gentleman moving his amendment for his explanation.

Mr. Houston, the sponsor of the amendment accordingly withdrew it and substituted in its place an amendment which was adopted and which was couched in the present wording of the statute, "and every filthy." In offering this amendment its sponsor stated (Cong. Rec. Vol. 43, Pt. 1, p. 284):

> Mr. HOUSTON. Mr. Chairman, I will read the section as it will be if amended by the amendment offered by me and sent to the desk: "Every obscene, lewd, or lascivious, and every filthy book, and so forth." Now, if we use the words "and other filthy,"* I think we get in a more distinctive class, which will embrace other articles of publication which are objectionable and that ought to be barred from the mails. The classification as stated in the old section as stated by the chairman has been held by the courts to apply only to matters relating to sexual impurity. Now it was the object of the amendment to add in a different class of filthy matter and have them excluded from the mails, but it was thought that was perhaps too indefinite, and there has been some holding, especially in a New York case, which has construed the words "vile, filthy, and indecent" in connection with the same words in the federal statute here, as still enumerating the same character of offense, because of their connection in the section. Now when we make this addition, setting forth "ob-

* The use of the word "other" in place of "every" which occurs at several places in the discussion of the amendment was evidently inadvertent, or a stenographic or typographical error. The official record in the State Department of the engrossed bill, as signed by the Speaker of the House and by the President, and the Statutes at Large (35 Stat. 1129), show that the amendment as passed used the words "and every filthy."

scene, lewd, or lascivious," and then the phrase "and other filthy," that brings in a positive and definite class which I think will be of less doubtful construction.

Further light is thrown on the scope of the amendment in the statements made by the committee chairman and the sponsor of the amendment in the following colloquy which then ensued:

Mr. HUMPHREYS of Mississippi. I desire to ask the gentleman, Has there been any judicial interpretation of the word "filthy"? Does it have reference to anything other than the physical condition of the book? Have the courts given that word any other meaning?

Mr. MOON of Pennsylvania. Nasty, dirty, filthy, vile, and impure is the general meaning of it.

Mr. HUMPHREYS of Mississippi. But does not that refer to the physical condition?

Mr. HOUSTON. It does not. It would refer to the character of the publication.

Mr. MOON of Pennsylvania. No; it refers to literature. It could not give it that meaning.

Mr. STAFFORD. Does the gentleman think the word "filthy" adds anything to the strength of the amendment?

Mr. HOUSTON. No; but the word "filthy" makes it another class in addition to obscene, lewd, and lascivious.

Mr. STAFFORD. Would not the words "vile, indecent, and disgusting" be a rather broader terminology than "vile, filthy, and indecent?"

Mr. HOUSTON. It was the opinion of the committee, and I think correctly, too, that the words "and other filthy" added to the terms already in the statute would make a

distinct class that would reach the objectionable matter that has been complained of by the department as having been sent through the mails to quite an extent.

Mr. STAFFORD. I certainly favor the adoption of the amendment.

Mr. MOON of Pennsylvania. Mr. Chairman, one word on behalf of the committee. I have no doubt Congress originally intended to create two distinct classes of nonmailable matter by the existing section. Indeed, the decision of the circuit court prior to the time of the Swearingen case had defined the word "obscene," or "obscenity," as that form of indecency which is calculated to promote the general corruption of morals. They had defined lewdness and lasciviousness as that form of immorality which has respect to sexual impurity. However, that distinct classification was overturned by the Supreme Court decision in the Swearingen case, which decided that owing to the juxtaposition of the words "obscene," "lewd," and "lascivious" Congress had created but one class. Therefore feeling that Congress originally intended to create these two distinct classes of prohibition, on behalf of the committee I am entirely willing to put this language in the form offered by the gentleman from Tennessee [Mr. HOUSTON], which I think does create another class and a class that the department informs us it is very necessary should be excluded from the mails.

Mr. MACON. I would like to ask the gentleman a question before he takes his seat. Does the gentleman from Pennsylvania [Mr. MOON], chairman of the committee, think that "filthy" covers the word "vulgar?"

Mr. MOON of Pennsylvania. I do. The synonyms of "filthy" are "nasty," "dirty,"

"polluted," "foul," "impure," and "obscene."

Mr. MACON. Nothing vulgar?

Mr. MOON of Pennsylvania. Well, I do not know. "Vulgar" is also a very broad word. If it is vulgarity extended to the verge of impurity or nastiness of any kind, it certainly would be included, and if it is not, I am not sure the mails ought to be closed to it.

Mr. MACON. The federal courts are holding now that you can put a vulgar thing in a letter, use a vulgar word, and transmit it through the mails, and not be indictable under the present statute.

Mr. MOON of Pennsylvania. Under the construction given in the Swearingen case.

Mr. MACON. Now, I want to ask if "filthy" would take in "vulgar?"

Mr. MOON of Pennsylvania. In my judgment it would to the extent to which we are to legislate upon that subject. I think it would, in other words. We have given it careful consideration, and the committee was under the impression that the word "filthy" would cover just what the department asked us to exclude.

The bill as amended in Committee of the Whole was then passed by the House and went to conference. (Cong. Rec., Vol. 43, Pt. 3, p. 2649.) No change was made in the wording of the section in conference. (Cong. Rec., Vol. 43, Pt. 4, pp. 3217–3218.) After some debate the conference report was agreed to by both Houses and the bill signed by the President.

It will be noticed that in discussing the amendment the committee chairman and the sponsor of the amendment stated several times that the

amendment was designed to cover a class of matter which the Post Office Department desired to have excluded. In an effort to ascertain just what this type of matter was, the Postmaster General was requested to advise this Department of any recommendation which the Post Office Department had submitted to Congress with respect to the amendment of Section 3893 R. S., the predecessor of Section 211 of the Criminal Code. In response to the Department's letter the Postmaster General forwarded a copy of a letter dated December 28, 1906, from Postmaster General Cortelyou to Mr. Moon, Chairman of the House Committee on Revision of the Laws, which he stated appeared to be the basis of the recommendation made with respect to the inclusion of the word "filthy" in Section 211. This letter reads as follows:

DECEMBER 28, 1906.

MY DEAR SIR: Mr. Anthony Comstock, Post-Office Inspector, has directed my attention to seeming defects in section 218 of Bill H. R. 17984, entitled "A Bill to Revise, Codify, and Amend the Penal Laws of the United States," which, according to my understanding, is now under consideration by a joint committee of the two Houses of Congress. It is stated by Inspector Comstock that there is a great deal of vulgar and disgusting matter going through the mails the sending of which can not be punished under existing laws, or, apparently, under the Revision of the Penal Laws, as embodied in section 218 of the bill in question. That section, as it now stands, provides that "every obscene, lewd, or lascivious, book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character," etc., is declared to be non-mailable mat-

ter, and shall not be conveyed in the mails or delivered from any post-office or by any letter carrier, and for the punishment of the offense of depositing such matter in the mails by a fine or imprisonment or both. The terms "obscene, lewd, or lascivious," according to the decision of the United States Supreme Court in *Swearingen* v. *United States* (161 U. S. 446), "signify that form of immorality which has relation to sexual impurity." It was said by the court to be undeniable that the newspaper article as found in the records, and with which the defendant was charged with having deposited in the mails, was "exceedingly coarse and vulgar, and, as applied to an individual person, plainly libelous. But we can not perceive in it anything of a lewd, lascivious and obscene tendency, calculated to corrupt and debauch the mind and morals of those into whose hands it might fall." The indictment in *Swearingen* v. *United States* was returned under section 3893 of the Revised Statutes, the language of which is precisely the same as that quoted in this letter from section 218 of Bill H. R. 17984.

It is suggested that the word "or" in line 19 of that section be omitted, and that following the word "lascivious" in that line the words "indecent or filthy" be inserted; that after the word "writing" in line 20 the word "or" be inserted; that in lieu of the words "or other" in the same line the words "and every" be introduced; and that the words "or filthy," following "indecent" in line 21, be inserted. The section will then read:

"Every obscene, lewd, lascivious, *indecent, or filthy* book, pamphlet, picture, paper, letter, writing, or print, *and every* publication of an indecent *or filthy* character," etc.

It is further suggested that the word "mail" be omitted from line 9 of section 218 as being superfluous and possibly confusing.

For the reasons given in respect of the changes suggested in section 218 it is recommended that the word "indecent" in line 23 of section 219 of the Revision be followed by the words "filthy, vulgar."

Very respectfully,

(Signed) GEO. B. CORTELYOU,
Postmaster General.

Hon. REUBEN O. MOON, M. C.,
Chairman Committee on Revision of the Laws,
House of Representatives.

U. S. GOVERNMENT PRINTING OFFICE: 1908

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No. 513

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

THE UNITED STATES OF AMERICA, *Appellant*

-vs-

O. B. LIMEHOUSE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

BRIEF FOR O. B. LIMEHOUSE

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INDEX:

	Page
Jurisdiction	1
Question presented	1
Statutes involved	2
Statement	2
Summary of argument	3
Argument	4
Appendix (legislative history)	26

CITATIONS

Cases:

Ash Sheep Co. v. United States, 252 U. S. 159	22
Donnelly v. United States, 276 U. S. 505	23
Dysart v. United States, 272 U. S. 655; 71 L. Ed. 461; 4 Fed. (2d) 776	4, 6, 7, 12, 13
Marshall Field & Co. v. Jno. M. Clark, Collector 143 U. S. 649; 36 L. Ed. 294	7
McBoyle v. United States, 283 U. S. 25	20
People v. Eastman, 188 N. Y. 478; 11 Ann. 302	14
Swearingen v. United States, 161 U. S. 446	3, 7, 16
Tyomies Publishing Co. v. United States 211 Fed. 385	4, 15, 18
United States v. Carter, 231 U. S. 492	5
United States v. Chase, 135 U. S. 255; 10 Suppt. 756; 34 L. Ed. 117	9
United States v. Davidson, 244 Fed. 523	4, 15
United States v. Dempsey, 188 Fed. 450	15. 17, 19
United States v. Journal Co., 197 Fed. 415	16, 17, 19
United States v. Keitel, 211 U. S. 370	5
United States v. Mo. Pac. R. Co. 278 U. S. 269; 71 L. Ed. 322	11
United States v. O'Donnell, 165 Fed. 220	8
United States v. Smith, 45 Fed. 477	37
United States v. Thind, 261 U. S. 204	23

Statutes:

Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U.S.C.) Title 18, Sec. 682 ..... 1, 4
Act of February 13, 1925, c. 229, 43 Stat. 936, 938 1
Criminal Code, Act of March 4, 1909, Sec. 211 (18 Sec. 334, U.S.C.) 1, 2
New York Penal Code, Sec. 317 ..... 14, 36
Revised Statutes, Sec. 3893 3

Congressional Documents:

Congressional Record—
Vol. 42, pt. 1, pp. 539-542-564-995-996 ..... 28, 29, 30
Vol. 42, pp. 996-997 35
Vol. 42, pt. 3, pp. 2391-2392 40
Vol. 43, pt. 1, p. 283 40
Vol. 43, pt. 3, p. 2649 41

Sen. Rep. No. 10, pt. 1, p. 22, pt. 2, p 230 26
Sen. Doc. No. 9, 57th Cong. 27
Report of Commission to Revise, etc. 27

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JURISDICTION

The jurisdiction of this Court to entertain the appeal is claimed by the Government under Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), commonly known as The Criminal Appeals Act, and by Section 238 of the Judical Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938. The appellee questions the applicability of this section in the instant case and will distinguish it under the precedents in argument. We understand that the question of jurisdiction may be raised at any time.

QUESTION PRESENTED.

The sole question presented from below is whether the District Judge erred in quashing the indictment and in sustaining the demurrer thereto on the ground that the letters set forth in the indictment are not "filthy" within the meaning of Section 211 of the Criminal Code.

STATUTES INVOLVED

The Statutes involved are correctly set out in the Government's brief and appendix thereto.

STATEMENT

The appellee was indicted in the District Court for violations of Section 211 of the Criminal Code (18 Sec. 334, U. S. C.) The indictment contains thirty counts. (R. 1-24). Each count charges that appellee

> unlawfully, knowingly, and wilfully did deposit and cause to be deposited, for mailing and delivery, certain nonmailable matter, to wit, a certain filthy letter and writing, etc.

Each count sets forth verbatim a separate letter. The District Court characterized the language of the letters (R. 26) as "coarse, vulgar, indelicate, and some of it is plainly libelous, and some possibly indecent." This is a fair characterization. The court (R. 27) said further of the language: "but it does not tend to corrupt the morals of the people in relation to sexual matters." The letters abound in billingsgate and abuse and are very offensive but not "filthy" within the meaning of the act. The Court held (R. 29), on the point whether the letters violated the act:

> The word "filthy" might conceivably be held to include matter which has no relation to sexual matters but would corrupt the morals of the people in other respects. Here, again, I think the context forbids any such construction. But even if such construction be permissible, it would not avail the Government in this case, because while the letters in question are, as has been stated, coarse, vulgar, indelicate, disgusting, and in some instances libelous, nevertheless I

cannot perceive that they would have any tendency to corrupt morals. They repel rather than incite.

The Court thus, while it did not agree with the Government in its construction of the statute, nevertheless held that the indictment should be quashed even under the Government's view of the Statute. We suggest that this court is without jurisdiction because the construction of the law was "not necessarily" passed upon.

SUMMARY OF ARGUMENT

We submit that the District Court committed no error in quashing the indictment and granting the order sustaining the demurrer thereto, on the ground that "each and every count thereof is adjudged not to state an offense against the United States, and to be insufficient in law" (R. 32). The ground for this was that the District Court held that the letters were not "filthy" within the meaning of Section 211. This word has acquired in connection with a statute of this kind a meaning similar to that given the words with which it is associated in the statute. The addition of the word to the section did not materially change its meaning.

The Standard Dictionary defines "filthy" as among other things "obscene", which had been construed in this connection; the Century Dictionary and Encyclopedia, 1911, defines "filth" as synonymous with "obscenity", which also has been construed in this connection; Webster's New International Dictionary, 1919, also defines "filthy" as, among other things, "obscene". So much for its lexicographical meaning. It has also a legal meaning. That legal meaning when the word "filthy" was used in a similar context in state statutes has been passed upon by the Courts, and certainly by implication, has been held to leave those statutes as the courts have historically defined their scope.

In Swearingen v United States, 161 U. S. 446, this Court gave to "obscene" a legal meaning in construing Section 3893 (now Sec. 211). It does not appear that Congress when the

word "filthy" was inserted in Sec. 211 intended materially to broaden the statute, although there were expressions pro and con on this point during the prolonged debates. There has been no authoritative decision since then holding with the Government's contention that such letters as those in the instant case are "filthy". The only authoritative decision bearing upon the subject implies the opposite—that of Dysart v. United States, 272 U. S. 655, 71 L. Ed. 461. In which the meaning of "filthy" was involved though not expressly considered. The case of United States v. Davidson, 244 Fed. 523, (N.D.N.Y.) cited in the Government's Brief, page 14, as "apparently the only case under Section 211. * * * in which the application of the word 'filthy' to language similar to that here involved has been passed upon", is not only not authoritative, but laboriously hesitates to pass upon the issue and apparently dubious of the meaning of the amendment leaves the matter to the jury. There is not even any record that the petit jury passed upon it nor how. The Davidson case rests in turn upon the case of Tyomies Publishing Co. v. United States 211 Fed. 358 which in reality is a case covered by the statute before Amendment.

ARGUMENT

We submit, on the question of jurisdiction which we are now raising for the first time, that mere erroneous construction of a statute by the District Court will not give this Court jurisdiction under the Act of March 2, 1907, c. 2564, 34 Stat. 1246. That construction must have been "necessarily involved". The language which we have quoted from the opinion of the District Court shows that while the Court expressed its construction of the Act as differing from that of the Government, yet the Court stated that taking the Act to mean what the Government contended, the letters did not in *fact* have "any tendency to corrupt morals. They repel rather than incite." (R 29). Hence the order quashing the indictment (R 32-33) did not *depend* upon the construction of the statute.

In a case such as this, (not where allegations of salient facts such as for instance a conspiracy to violate a statute, as in the

Keitel case, U. S. 2 Keitel, 211 U. S., 370-399 form the charging part of the indictment) where the evidence itself, that is, the letters, are set out in the indictment, what the Court passed upon was as if upon a motion for directed verdict after the Government had put in its evidence. This would not have been appealable. If the case had gone to trial, and upon the Government's proof, the District Court need not have left the case to the jury if in the District Court's view of the evidence and fully adopting the Government's construction of Section 211, it felt that no case had been made.

We submit that by analogy the principle of United States v. Carter, 231 U. S. 492, governs the case. At page 493 this Court in that case said:

> "Our power to review the action of the Court then in this case can alone rest upon the theory that what was done amounts to a construction of the statute. But it is obvious that the ruling that the counts which were quashed were bad in law did *not necessarily involve a construction of the statute, and may well have rested upon the opinion of the Court as to the mere insufficiency of the indictment.* (Italics ours).

This, we submit, is what did happen here. A construction of the law did not *necessarily* enter into the Court's decision. The Court actually found the indictment to be "insufficient in law", (R. 32) even taking the Government's construction of the Statute as its guide and applying the content of the letters to that construction (R. 29.).

SOLE QUESTION

Barring the preliminary question of jurisidiction, the sole question presented is whether the District Judge erred in quashing the indictment and in sustaining the demurrer thereto because the letters set forth in the indictment are not "filthy" within the meaning of Sec. 211 of the Criminal Code. The Court below held (R. 38):

> The letters now under consideration are clearly not with-

> in the meaning of the original statute as construed in the Swearingen case, and the Government so concedes. The language of the letters is coarse, vulgar, indelicate, and some of it is plainly libelous, and some possibly indecent, but it does not tend to corrupt the morals of the people in relation to sexual matters.

The entire opinion of the Court below is so cogent and in our view so thoroughly sound that nothing we may say can add much weight. It amounts to a brief. The learned District Judge was for many long years an exceptionally able and dilligent District Attorney. He necessarily often considered this section. Thus, (R. 46):

> "The writer of this opinion knows from long years' experience as a prosecuting officer for the Government that many hundreds of cases similar to this have come up for consideration and have occasioned the Post Office Department and prosecuting officers a great deal of trouble in determining whether they should be prosecuted or not in view of the amendment to the statute. Few of such cases have been prosecuted.

The original Act was passed in 1876, and until 1909 when the word "filthy" was added the case of Swearingen v. United States, 161 U. S. 446, was the authoritative case. That case to repeat, has only recently been followed by this Court in Dysart v. United States, 272 U. S. 655.

While, the learned District Court points out, the Dysart case did not touch upon the precise point "because the word 'filthy' was not under consideration in that case", the District Court adds: "It has some persuasive force, however, because it does show that the Swearingen case is still the law so far as it is applicable". We submit that it has even more than a persuasive force. By implication this Court passed upon the word "filthy", as we shall later show, in the Dysart case. This Court reversed the judgment of the District Court, which had been affirmed by the Circuit Court of Appeals and held that the matter complain-

ed of did not violate the Act. If it had been "filthy" within the meaning of the Act it must have violated it. How filthy it was in the ordinary sense of the word we shall later analyze. The language of this Court in the Dysart case certainly shows that the test of the statute is still whether the objectionable matter had a tendency to deprave and corrupt the morals of those whose minds are open to such influence. This Court says, page 657:

> The Solicitor General, with his usual commendable candor, after calling attention to the facts disclosed by the record and relevant opinions, adds: "It is not so easy to prove that circulars of this kind could to any substantial degree undermine morals or induce delinquency. To some such a result would seem altogether fanciful".

From the Swearingen case to the Dysart case, an examination will show that the tendency of the courts was to adopt the Swearingen doctrine although the word "filthy" had been added. The courts jealously guarded precedents narrowly limiting common law and statutory prosecutions abridging the freedom of speech. Rather have the Courts relegated complainants to local laws against libel, slander, etc. From time to time reformers have arisen and brought pressure upon legislative bodies for legal shortcuts. But these bodies have been equally jealous of liberty. We shall see how slowly they moved even under clamor and pressure, how hard it was to persuade them to squeeze even the one word "filthy" into the law. It is even doubtful that it actually was squeezed in. We have been unable to find any record where the Senate adopted it. Though it appears as a part of the Code, as a pure parliamentary fact the amendment which was once definitely defeated in the Senate, so far as we can find was never adopted there. The report of the free conference committee does not seem to recommend the adoption of this House amendment although the various sections that were agreed upon are clearly reported. However, while in the great majority of State jurisdictions it is permissible to impeach the authenticity of an enrolled Act, we take it that the rule as laid down in Marshall Field & Co. v. John M. Clark, Collector, 143

U. S. 649; 36 L. Ed. 294, is the rule in this Court—that we are bound by the enrolled bill.

The House reluctantly conceded the amendment but perhaps as a meaningless sop. Congress probably meant for it to mean very little. It is remarkable that whereas Section 3893 was originally passed more than fifty years ago and the word "filthy" was added over twenty years ago, not one single clearcut case was brought seeking the construction of the amendment. No decision can be found under which any court has held that a sealed letter sent through the mail intended only for the eye of the recipient and which did not contain language such as was likely to corrupt morals or excite sexual impulses, is contrary to the statute. Not one.

The Government refers to the legislative history of the Bill. Certain members of Congress while the Act was under passage proposed various words or groups of words to enlarge the statute. Other equally able members of Congress were opposed. See Appendix. It is clear from the debates that when the Act was passed any member who voted for or against it could have justified his vote on whatever view of it his constituents favored. The word finally agreed upon—"filthy"—was conceded at the last moment in the mists of ambiguity.

The letter of the Postmaster General exhibited in Appendix C, p. 33 of the Government Brief does show that Anthony Comstock urged the legislation. But that letter does not show that Mr. Comstock was interested in *private letters under seal.* He in fact never was. The letter refers to him as a "Post Office Inspector". But this Court will take judicial notice that Anthony Comstock, if indeed for whatever purpose he might have been technically a Post Office Inspector, was far more than that in the moral history of his time. He was a crusader fighting precisely against pornographic art and literature, particularly when circulated through the mails or publicly exposed to view such as at galleries, museums, news-stands, book-stores, etc, but never against private letter-writing, however abusive. And the Courts have made a point as to the difference. Thus, in United State v. O'Donnell, 165 Fed. p. 220, the Court said:

If the subject matter of the indictment were charged to be a "publication of an indecent character", it would be necessary to consider whether the word "publication" could be held to include a sealed letter. This question was passed upon in the case of United States v. Chase, 135 U. S. 255, 10 Sup. Ct: 756, 34 L. Ed. 117, which was based upon the statute in its old form before the word "letter" was inserted. The Court there held that the words of the old statute could not refer to a letter.

Turning to the Chase case, we find this Court said 34 L. Ed. 119:

> In the statute under consideration, the word "writing" is used as one of a group or class of words—books—pamphlet, picture, paper, writing, print—each of which is ordinarily and prima facie understood to be a publication; * * *.
>
> It must therefore, according to a well-defined rule of construction, be a published writing which is contemplated by the statute, and not a private letter, on the outside of which there is nothing but the name and address of the person to whom it is written.

It is true that the word "letter" was afterward added to Sec. 211. But the decisions not only show how slow this court was to stretch the Act, and how it left any doubtful language to be clearly enlarged by Congress, but the Chase case has a bearing upon the instant case which we shall cover more fully later when we consider the debates in Congress. But to anticipate: these debates show that Congress was thinking in terms of "publications" and not "letters". It was only another device of Comstock to suppress immoral "publications", not to prevent billingsgate in letter writing.

Comstock was himself a man not altogether opposed to violence in his war on vice. He certainly was at times extreme in his views. Thus Mr. Shirley of Kentucky said of him while this legislation was pending in the House:

'I do not recall that the Department offered these words as an enlargement of the statute. It is true that Mr. Comstock appeared before our committee. He has been actively engaged in prosecuting violations of the existing law and has done very valuable work, but Mr. Comstock like a great many gentlemen engaged in a special line, is apt to become just a bit extreme, and his view, if it had been adopted by the committee, would have given to the Department powers that could and would have led to great abuses.

To return to a consideration of the meaning of the word filthy. If Congress had intended to broaden the Act and to bring within its meaning such language as the Court passed upon in the Swearingen case, it could have done so very simply. Legislative bodies enact laws knowing the decisions construing the meaning of words. As the Congressional debates show, proposed amendments in many words and forms which finally culminated in the word "filthy" had been under deliberation for many years. There seemed to be a determined effort to keep out *any* amendment along this line. If it were not *lese majeste* to say it, it might almost seem that Congress was "joshing". Mr. Comstock believed very much in the efficacy of law in banishing sin. But legislative bodies are not quite as ready to make all sins crimes. They would leave something to the field of conscience. Some philosophers believe that immorality loses some of its enormity when sinners are given to feel that the Commandments have been superseded by man made law. Congress is made up of practical men who very often pass laws under the push of virtuous lobbyists whose methods of reform they may not inwardly sanction, and in some cases, especially as Congress knows the meaning of words, what Congress really enacts is sometimes muddled by the mental and moral struggle between the inner views of members and their outer conformity. It is no imputation upon Congress, and certainly no reflection upon its common sense to say that in reference to such legislation members sometimes play the game.

One thing seems sure about this particular legislation—that with the historical reluctance of the courts to stretch the mean-

ing of the law even in favor of decency at the price of free speech, Congress might well have left the meaning cloudy if it did not choose to make it clear. It was manifestly not made clear or the Post Office Department would not have waited twenty years of non-enforcement to ask this Court to hold (whereas thousands in the meantime had escaped) that twenty-three years ago Congress positively meant to put a stop to such use of the mails. If the Post Office Department believed a quarter of a century ago that Mr. Comstock had won from Congress what he wanted and the Department understood the law meant what this Court is now asked to say it meant, such a competent department would have filled the courts with prosecutions under it. The Department of Justice through all these years would not have allowed the District Attorneys to permit "many hundreds of cases similar to this" to go unprosecuted.

In a note to the case of United States v. Missouri Pac. R. Co., 278 U. S. 269; 71 L. Ed. 322, the doctrine is again announced that:

> The practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration or enforcement is entitled to the highest respect, and, though not controlling, if acted upon for a number of years, will not be disturbed except for very cogent and persuasive reasons.

The Brief for the Government sets out that the letters in the instant case were anonymous. The Government further points out that they were written as the outcome of a factional political fight. We also may mention that these anonymous scurrilous letters were written in hardly decipherable hieroglyphics, and were mailed in sealed envelopes to each individual privately. It is because this case is the outcroping of a bitter rural political election that the defendant under the advice of counsel wishes to avail himself of *the law*. This is no reflection on the Courts. It is *juries* that try cases, juries made up of men of human passions drawn from the vincinage. Often even one partisan of unconscious bias blocks acquittal though "eleven stubborn men" hold

out. But had the case gone to trial the defendant would of course deny that he wrote the letters.

As the District Court points out, the few cases that have been prosecuted involved not in reality the word "filthy", but the same sexual pander which has run with the law as its essence from the earliest times. We submit there can be but one reason why in a quarter of a century no such case as this has been brought under the Act, raising the absolute point. It is that after Congress had simply added another word of the same import as "lewd, lascivious or indecent", the Government concluded there had been no material change.

While, however, as we have said, there has been no decision from the court on the point, certainly the Dysart decision *implies* that the amendment made no change. First of all, it *followed* the Swearingen case—expressly reaffirming it. It is true this Court did not pass specifically upon the word "filthy". But as the word "filthy" was then in the statute, whereas it was not at the time of the Swearingen case, it was included presumably along with the other words of the statute in the charge that the section had been violated. This Court unanimously held that no offense had been charged. That was the substance of the Dysart decision, and this Court set out Sec. 211, including the word "filthy" in its decision.

In submitting the cause for the Government, Solicitor General Mitchell in the Dysart case at page 656 made use of these words:

> The rule by which to "determine whether a writing comes within the meaning of the statute is whether its language has a tendency to deprave and corrupt the morals of those whose minds are open to such influences, and into whose hands it may fall, by arousing or implanting in such minds obscene, lewd, or lascivious thoughts or desires, * * *."

Let us examine the language in that case. It did not tend to excite sexual impulses, as the Court held, but if the word "filthy" as used in the statute was meant to cover language such

as was used in the case at bar, then surely this court would have held in the Dysart case that the language there used was filthy within the meaning of the Act. For boiled down, that language was a direct suggestion to young ladies of prominent familes, who received the letters, opened possibly at the breakfast table in the presence of their families, raising before their innocent minds the horrible thought that they might at the moment or at any time in the future be in a state of pregnancy through 'a mistake". (See Dysart v United States; 4 Fed. 2d. Series 766); in other words, it was suggested that by a failure to use some contraceptive they as unmarried girls might soon be mothers but that they could destroy the child if they would only hide themselves at the designated hospital until the trouble was over. Certainly this was calculated to arouse the filthiest and most revolting thoughts as well as the most furious resentment. Those letters could have led to any consequence except one. *They had no tendency whatever to corrupt morals or excite sexual impulses.* That was impossible. The letters in the instant case might also excite every passion, but the same one.

In the Appellant's Brief, page 6, we read:

> The letters set forth in the indictment are not calculated to corrupt the minds or morals of those in whose hands they fall. But they abound in vile epithets and charges of disgusting immorality.

That is true, and we submit it is the gist of the case. The Appellant's Brief points out from the debates in Congress, page 13, that when the proposed amendment was finally considered in the house, in place of the suggested words "vile, filthy or indecent" the words "and every filthy" were inserted, and the Bill became law. Thus we find that the very word "vile" which the Government uses to characterize these letters, was stricken out of the amendment.

When Congress employed the word "filthy" it had before it the opinion of a very high State Court passing upon the meaning of a similar law of New York State including the word "filthy".

Mr. Comstock was from New York State. Most of his activities as a moral reformer had been in New York City. He may have fathered the very law which was construed in the case of People v. Eastman, 188 N. Y. 478; 11 Ann Cases 302. On May 21st., 1907, shortly before Congress added the word "filthy" to the law as the Post Office Department says at Mr. Comstock's suggestion, the New York Court of Appeals passed upon the meaning of Section 317 of the Penal Code (N. Y.):

> Section 317. Obscene prints. 1. A person who sells, lends, gives away, or shows, or offers to sell, lend, give away or show or has in his possession, with intent to sell, lend, or give away, or to show, or advertise in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, *filthy,* indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matted of an indecent character.

Note also that the title of the section is "Obscene Prints."

In a per Curriam opinion the New York court says:

> The word "indecent" is used in a limited sense in this connection and falls within the maxim of noscitur a sociis.

We submit that the Court equally would have said that the word "filthy" was used in the same limited sense and fell within the same rule of noscitur a sociis, as did the learned District Judge in the instant case. The Court referred to the word "indecent" only in conection with the term "of an indecent character" as charged in the indictment, and as of the group to which all the words, including "filthy" belonged. Federal Sec. 211 is not as broad as the New York Act.

Chief Justice Cullen, speaking of the publication in People v. Eastman, (supra) said, Page 479:

"The court is of the opinion that the publication set forth in the indictment is improper, intemperate, unjustifiable, and highly reprehensible, nevertheless it is not indecent, as that word is implied in Section 317 of the Penal Code.

The definitions given by the standard lexicographers are not controlling in deciding its legal signification; many meanings as used in ordinary conversation are also irrelevant.

When it is considered that this case was expressly referred to in Congress during the debates there can be hardly a doubt that "filthy" was employed intentionally to confine the Act to the same general subject.

The Government seems to put much stress on the case of U. S. versus Davidson, 244 Fed. 523. We quote from the Government's Brief: (Pages 14-15)

Apparently the only case under Section 211, except the instant case, in which the application of the word "filthy" to language similar to that here involved has been passed upon is United States v. Davidson, 244 Fed. 523 (N.D.N.Y.), in which the court overruled a demurrer to the indictment and held that the question whether the language was 'filthy' should be left to the jury. The word 'filthy' in this statute has been given a broad construction in the only other cases in which its meaning has been expressly considered, Tyomies Publishing Co. v. United States, 211 Fed. 385 (C.C.A. 6th) and United States v. Dempsey, 188 Fed. 450 (E. D. Ark). See also Atwell's Federal Criminal law (Fourth Ed.) pp 260-261.

Actually, this seems to be the sum total of the Government's case.

In the Davidson case, there were two counts in the indictment. The court sustained a demurrer to one and overruled a demurrer to the other, leaving the question on that count to be decided by a jury.

We submit that a reading of the entire opinion in the Davidson case will convince this court that the Honorable District Judge left the case to the jury not because *he* construed the word "filthy" as materially adding to the statute, but the contrary. All the way through, in considering the word "filthy" the Court speaks as if the letter must "suggest libidinous thoughts and sexual desires with those readers into whose hands it might come", or that it would "tend to deprave the morals of such readers in that direction". Considering whether it should be left to the jury, the learned District Judge, after quoting from the objectionable language, p 527, said:

> "Is it a filthy letter or writing of an indecent character? Is the tendency of this letter to deprave or corrupt the minds of those open to lascivious influence? Is there any chance that reasonable men would hold it obscene, lewd, or lascivious? * * * * * * *" In this case the letter charged the addressee with having committed adultery with her son-in-law. This, of course, charged sexual impurity, but it was held it could not in any way corrupt the mind or the morals of the recipient. * * * *
>
> If the decision of that case was correct, then this letter in the instant case is not within the statute cited, as it charges the recipient with being the mother of a bastard, and prostitute, and with having a bunch of prostitutes and bastards about her as her only backers and associates. The letter would invite the anger and indignation and resentment of the recipient rather than have a corrupting influence on her or on anyone who might read it. Clearly, it would not excite sexual desires or passions.

The court reviews numbers of cases, including the Swearingen case and finds that all these cases adhere to the established construction upon such words in conection with similar statutes, as "obscene", "lewd", "lascivious" and "indecent". It then takes up the few cases arising since the amendment. It sets out the character of the publication in U. S. v. Journal Co. 197 Fed. 415, in which case the Court granted a motion to quash (from

which the Government did not appeal). The learned Judge speaks of this case as "apt and instructive".

It quotes freely from the language of the Journal case, but we prefer not to do so. We shall use only that portion of the Court's opinion which characterizes it, 244 Fed. 530.

> The language of this publication, as matter of course and of necessity, was foul, nasty and indecent, but the court said, in substance, that while the publicatoin and circulation had best not been made, still the publication and reading of same, instead of tending to deprave and corrupt the minds and morals of readers whose minds are open to such influences by arousing and implanting therein obscene, lewd, and lascivious thoughts and desires relating to sexual impurity, should rather have the very opposite or contrary effect. The indictment was quashed on this and other grounds. The casess seem to tenaciously adhere to the doctrine that one class only of writings and publications are forbidden the mails by this section, viz, those which have a tendency to excite the sexual feelings and desires and which tend to deprave the morals of the reader in that direction.

The learned Court then proceeds to consider the Dempsey case. Please observe that the Dempsey case is one of the three cases cited by the Government. (Brief p. 15). Of that case the Court says p. 531:

> This language is so clearly suggestive of sexual impurity, and is so carefully calculated and designed to suggest and awaken sexual thoughts and desires with those whose minds are that way inclined, that it comes within the definition or construction placed on the statute by the Supreme Court. It is not filthy, but clearly lascivious, which means, 'tending to excite voluptuous emotions; luxurious' * * *"

Going back to the older cases and taking the statute to pieces chronologically the Court nowhere finds anything that in any

material sense has changed the law, but finally leaves the case to the jury practically under the old test, before doing so saying, p. 533:

"I do not think a case for a jury is persented unless the writing is either obscene, lewd, lascivious, or so filthy as to be of an indecent character, as *heretofore defined*, in the opinion of the Court. Clearly, the court must construe the statute and its meaning, and define the meaning of such of the words therein; and if the article complained of as a whole and in each of its expressions is not within it, no case for the jury is presented. Is it for the court to say, as a matter of law, that all this would not suggest libidinous thoughts and sexual desires with those readers into whose hands it might come, or would not tend to deprave the morals of such readers in that direction?"

The Court then holds that it should follow the case of Tyomies Pub. Co., v. U. S. 211 Fed. 385. (The Court, however, makes no point that the matter complained of in the Tyomies case apparently would have been nonmailable before the amendment). Then the learned Judge—we frankly cannot undestand why—proceeds:

Does not this decision, while not binding, require this court to have submited to the jury on a trial the question whether or not this letter was "filthy" within the meannig of the statute? The language is clearly "vulgar" and "offensive to the moral sense" in matters relating to illicit sexual relations, and it is therefore of the same general character as is written language prohibited the mails and covered by obscene, lewd and lascivious.

And we most respectfully submit, the learned Court then illogically concludes:

I think the language "filthy * * * letter * * * of an indecent character" brings within the statute a communication sent to another through the mails which would not be

covered by the preceding words obscene, lewd, and lascivious if it be a filthy letter of an indecent character, even though it is not of a character which would promote or excite sexual desires or emotions.

The decision in United States v. Journal, (supra) was rendered in June, 1912, when the Government had had ample time since the adoption of the amendment, (March, 1909) to chart its course. The case grew out of the publication of evidence in a celebrated murder trial at Richmond. The opinion of the Court stated that "the leading papers of the Unted States teemed with accounts of the murder, and particularly of the proceedings and the trial". (p. 416). There can be no doubt that the *whole* of the statute, including the word "filthy" was in the mind of the Court, for the Court said (p. 416) "the question of the character of the contents of the paper—whether it comes within the inhibited class named *in the statute*— is one ordinarily to be determined by the jury under appropriate instructions from the court—that is when there is such doubt as to the meaning and effect of the same, that persons would reasonably differ in respect thereto." (Italics ours.).

The court was passing, not upon whether the word "filth" was used in the charging part of the indictment but upon whether the "contents of the paper * * * comes within the inhibited class named *in the statute*". That inhibited class of course included "filthy".

That opinion was written after the Dempsey case, to repeat, upon which the Government seems partly to rely (Brief p. 15). In the Dempsey case the court saw fit to submit the issue to the jury. But the language complained of in the Dempsey case was easily within the act even without the word "filthy" and the language was not "filthy" either in the legal or the vernacular sense. It was in fact soft and polite, but it plainly implied sexuality. If that language was not a sex appeal, we have never read one. In the case of United States v. Journal (supra) the Court did not submit the issue to the jury because the publication complained of "could not by any reasonable judgment be held to come within the prohibition of the law."

The Act giving the government the right to appeal had then been in effect five years and the law governing that right had already been clearly enunciated by this Court. The *Government did not appeal* and, therefore, we profoundly submit, the general public could place no interpretation upon the law other than that which the Government itself placed upon it, by not appealing in this one recorded case in which the language, in the *revolting sense*, was filthy. Was it because it knew that the language, though revolting, had no sex arousal in it, and was not contrary to the statute? The answer to this question can only be found in the archives of the Post Office Department.

We beg at this point that the Court will read again from the Transcript of Record below (R. 28) the lucid analysis of the history of the legislation in Congress. We particularly call attention to the lower Courts' reference to the case of McBoyle v. United States, 283 U. S. 25, 27, in which this Court recently said:

> Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, *of what the law intends to do if a certain line is passed.* (Italics ours).

Surely if this rule applies to the construction of a law by "the common world", with how much more assurance might that common world accept the meaning of a law which has been construed by the courts in a celebrated case such as Sec. 211 was in the Journal case?

Moreover, Congress which had passed the law, accepted that construction also. The Post Office Department likewise. For twenty years since the Journal case was decided literally millions of tons of such publications—often much worse—have passed through the mails. Only read the daily tabloids or some weekly or monthly magazines. Truly do they "contain torrents of foul language" in the words of the Government Brief. Perhaps some members of Congress read them—perhaps some publish them;

"Post Office Inspectors", no longer Anthony Comstocks, may also read them, perhaps subscribe to them at their homes. Someone must read them, for every year huge forests are turned into pulp to keep the mail trains running. In deed so desirous is the Government to encourage the circulation of second class matter that it is handled at a loss. It is incalculable how many rolls of virgin paper have been soiled in these twenty years while the Post Office Department has accepted the situation. Liberty, how many sins have been committed in thy name! That is one side of the picture. The other—is the sacred right of free speech. It may be well—some believe it is—for a great *Moral* censor to place thought under restraint by an Index Expurgatorious, thus protecting faith and morals. But the State—after all, is not its province "to prevent crime not sin?" Someone has said so. But at any rate Congress still looks on, thinking the matter over.

The literature scattered through the mails in these twenty years has not been in sealed envelopes addressed to individuals who upon opening them have the option of tearing it up. It has been blazoned in scare-heads across front pages. In fact the object in printing it is to sell it, in other words to be rewarded for it; or worse the diabolical object of corrupting the innocent. No Post Office start has been made against that. Must it be left to make a late start by bringing a case against some cryptic mad-man—for whoever wrote these letters is such—or, (mark the word) some mad-woman who has thus far hidden behind these hieroglyphics? Indeed many experts in the anonymous and scurrilious first "look for the woman," the French maxim newly applied.

We submit, also, that it is not quite fair in fact, though the Government perhaps could not avoid it to stick these foul letters in print before the eye of this Court. The Court is bound to recoil. These deranged letters undoubtedly damage the reason for the moment of whoever reads them. Whether they were mailed by someone bent on revenge for a then recent homicide, as some believe, or by the hand of malice for the purpose of pointing the hatred of a small community against a defeated candidate, supposed to have a political grudge in mailing them,

and in cunning simulation of many of his pet resentments is one theory in which case the defendant could not have written them; or whether, as alleged by the Government they were actually written by the defendant in policital chagrin—one thing is certain, that they were written calculated to arouse the *anger* of each recipient and not the lust. If the letters however are not "filthy" within the meaning of the Act, why should the Court leave to a jury and to an already over wrought community the further agony of washing its most private linen in public? So that although these letters which were received, each in private, have been opened up in public by the Government before the eyes of this Court, we beg that this Court, as of course it will, after the first natural shock of reading them has passed, will resume its judicial habit. It will be hard, but that is what we ask. If the mailing of these letters was not a crime, though it was terrible, why should first the defendant and then upon his acquittal as many as may be thereafter suspected be put through such trials as will follow until someone is convicted or discovery abandoned?

At page 6 in the Government's Summary of Argument, and again at page 9, the Government refers to the action by Congress as if it were specifically taken to meet the decision in the Swearingen case. As we have pointed out, Congress was at the time the amendment was passed engaged in the codification of the entire body of the criminal law, and only considered Section 211 as a part thereof. It is significant that if Congress adopted Section 211 to meet the Swearingen case, all these years have since gone by and Congress has done nothing further to clear up the Act, especially in the light of the decisions that have followed the Swearingen case. See Ash Sheep Co. v. United States, 252 U. S. 169. The Government cited this case on a point upon which we do not think it applicable. But we do think it applicable on this point—that is, that long acquiescence in a given interpretation of word by a Department gives those words a legal status.

Section 211 was what might be termed a section addressed to the prevention of some particular effect in the future upon persons by the use of the mails. It was not intended to denounce

letters which invariably in their vilification, or calumny, or billingsgate refer to things of the past. It cannot be imagined that the recipient of any one of these letters could be in the least thereby corrupted along moral lines. He might be deeply grieved or outraged in his sentiment, but not in his morals.

The case of United States v. Thind, 261 U. S. 204, 209, cited by the Government, p. 7, construed the meaning of "white person", under the naturalization laws. That case helps us. There is not a "common man" in this country who does not know the meaning of "white person." We have not examined the debates as they bore upon the use of the term "white person" when the act was passed. We would risk the guess, however, that it did not take Congress years to find these two words to express the legislative intent. The words "and every filthy", however, were selected in amending a statute that had existed for years whose words had already baffled understanding. No two members of Congress expressed the same understanding of what the words were intended to cover. Some said they were equivalent to the word "obscene", and "obscene" had already been judicially defined. Some believed the words would not change the meaning of the statute; others believed they would, but were doubtful how. If the words were being interpreted by the "common man" disassociated from its context in the statute as well as the judicial construction of the statute, it might have a very broad meaning. The common man could be asked whether a man that was pointed out to him was a "white person" and he would know what was meant, even though he could not answer the question. Looks are not always safe. But every common man that passed along might have a different idea of what "filthy" meant sandwiched into this statute. Congressman Shirley said during the debates about the very word that there would be as many opinions about "vile, filthy and indecent" in this connection as there were people. We should say that whereas everybody knows the meaning of "white person" nobody knows the meaning of "filthy", the meaning of which Congress itself did not agree upon at the time, and which has never been free from ambiguity—even in the Courts. Moreover this is a penal statute. The Government Cites p. 17, the case of Donnelly v. United States, 276 U. S. 505. We see nothing in

this case to alter the rule that criminal statutes must be construed strictly and in favor of the defendant. The District Court we submit stated the law correctly, "that in a criminal case of this sort, of a highly penal nature, a citizen should not be compelled to resort to proceedings in Congress to determine whether a course of action on his part is or is not prohibited by law when the statute is fairly clear on its face."

Nor are we contending that the addition of the word "filthy" is to be treated as "vain or senseless if it is possible to avoid it." We think that many things may be obscene, lewd or lascivious and at the same time not filthy. In fact, there are no two words in the English language meaning exactly the same thing. Neither obscene, lewd, nor lascivious, taken separately has exactly the same meaning as each other. But the Court has in reference to these very words held that they are to be construed under the rule of noscitur a sociis. When the word "filthy" was added it was just another addition to the family. But it went back to the same parent stem so far as the broad purpose of the act was concerned. While it has an individuality it yet bears the family resemblance. The creative power of Congress could well have given it birth in a different family if it had willed to do so. It could very clearly have stamped it with the image of a new species of crime by defining either in another section or by suitable words in the same section what "filthy" meant. As Congress had discussed the Eastman decision in which "filthy" was by implication classed with "obscene" etc., Congress could have said that it was not to remain in the society of its kindred words. Congress knew that in many of the decisions interpreting the old statute the Courts had defined obscene, lewd and lascivious by way of illustration as synonymous with filthy at times, indecent at times, vile at times, etc., and Congress knew that the Swearingen case had tied all these words in with a definite meaning importing sex immorality. We submit that when the Post Office Department itself as appears in the record below passed up "many hundreds of cases" because it did not know what the word meant, the forbidden offence could have been clarified so the "common man" would understand unless Congress perhaps intended to leave it vague. What does it mean when used in the *lower* part of the section; that is

when the words are used: "and every letter, packet, or package or other mail matter containing any filthy, vile, or indecent thing, device or substance"? It cannot mean in this connection quite what it means above because these words were in the section without any opposition from any source when the bill was first reported from the committee, and it was only when the words "vile, filthy and disgusting" were sought to be interpolated in the upper part of the section that opposition was aroused—such opposition that the amendment was grudgingly stripped down to the one word "filthy". We submit that whereas in the second usage "vile" and "indecent" were left in the statute, and as these words met with none of the opposition that their other use aroused, filthy in the first use must have a different meaning than filthy in the second. What does it mean in the second usage? We think that it has a *sex import—there.* In fact, all the way through the statute there is a sex import. The section is a sex section; it is *pornographic* all the way through, and the word filthy added to lewd, obscene and lascivious possibly means some literature of a sex pornographic import that is far lower than what is merely obscene, lewd or lascivious—far more depraving, possibly of such a character as is calculated to arouse unnatural sex impulse. We do not believe it was meant to cover insults, libels, abuse, scurrility, or anything of any character that was directed *against* the person receiving it or that was about anybody else, unless somehow it aroused either natural or unnatural sex impulses. But at any rate through many years intelligent men have differed as to what it did mean so that its meaning is to such an extent uncertain that nothing but a declaratory act of Congress in our opinion could give it such a meaning as would justify depriving any man of his liberty for its violation.

We submit that the orders sustaining the demurrer and granting the motion to quash should be affirmed.

Respectfully submitted,

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APPENDIX

After Congress had discharged both the first and second Commissions that had been appointed to codify the laws, it constituted a Special Joint Committee on a revision of the laws and appointed its members from the Senate and House, Senator Heyburn to have the matter in charge from the Senate and Mr. Moon of Pennsylvania from the House.

This Joint Committee, of course, had before it all the reports, the recommendations of the Post Office Department, of Mr. Comstock, the Attorney General, and whoever might have any proper place in the work of revising what is now Section 211, sometimes referred to as Section 185 or as 212.

In submitting its report to the House and the Senate, this Special Joint Committee accompanied the report by an identical Bill—House Bill 11701 and Senate Bill 2982. Mr. Heyburn made only this comment as to Section 212, now Section 211:

> Aside from the transposition of language, the other changes made in this section which are designed to perfect the law so that its provisions cannot be evaded, are indicated by the words italicised.
>
> (Senate Report 10, Part 1, p. 22, Part 2; p. 230)

The following is the section as submitted by him, the proposed amendments being in italics:

> SECTION 212. (Every obscene, lewd, or lascivious book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, *adapted,* or intended for preventing or *producing* abortion, or for any indecent or immoral use, *and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose,* and every written or printed card, letter,

circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or *from* whom, or by what means any of the hereinbefore mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed, and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance, and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be used or applied for preventing conception, or producing abortion or for any indecent or immoral purpose, and every description calculated to induce or incite a person to so use, or apply, any such article, instrument, substance, drug, medicine, *or thing, is hereby declared to be non-mailable matter and shall not be conveyed in the mails or delivered from any Post Office or by any letter-carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be non-mailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof,* shall be fined not more than $5,000.00, or imprisoned not more than five years, or both) (R., S. 3893, 36 Sept, 1888, 25 Stat. L. 496, c 1039, S, 2; 1 Supp., 621.)

This report and bill completely ignored so far as the insertion of "vile, filthy and indecent" was concerned the very exhaustive report submitted in the letter of transmittal of the Attorney General on December 11, 1901, transmitting "the Report of the Commission to Revise and Codify the Criminal and Penal Laws of the United States", which Commission had itself been at work for several years. The report of that Commission was dated November 15th., 1901, and at page XVI thereof, Senate Documents No. 9, 57th Congress, 1st., Session, under Section 185, among other things it says:

In the light of this decision, (Swearingen) and to prevent a flagrant abuse of the mails, we have added the words "indecent, vile, or filthy", in the revision of the sections mentioned.

At page 60 of Part 2 of said report, Section 185 (Now Sec. 211) is set out in full as proposed by the Commission, beginning thus:

"Every obscene, lewd, lascivious, indecent, vile, or filthy book, pamphlet, picture, paper, letter, writing, print, or any publication of an indecent character, and every article or thing designed or intended for the prevention of conception, for the producing of abortion, or every article or thing intended or adapted for any indecent or immoral use."

While the report of the Commission thus added the words "indecent, vile, or filthy", the Report of the Joint Committee of Congress left these words out and as the debates will show, especially in the Senate, Congress was determined not to enlarge the statute. To repeat, this was after the Swearingen case, and after the Post Office Department, Mr. Comstock, the Attorney General, and the Code Commission, had undertaken to enlarge it by the use of the words "vile, indecent and filthy".

In submitting this Joint Report to the House, Mr. Dalzell, page 539, Congressional Record, Volume 42, Part 1, 60th. Congress, 1st. Session, Jan., 8, 1908, made these remarks:

"Mr. Speaker, the Bill referred to in the rule is a Bill to Codify, Revise, and Amend the Penal Laws of the United States. Members of the House will recollect that some ten years ago—to be exact, in 1897, a Commission was appointed to codify the Laws of the United States. In the first place, it was appointed to codify merely the penal laws of the United States, but its jurisdiction and duties from time to time were extended, until finally it was authorized to present a complete code revising all the laws of the United States.

In the Sundry Civil Appropriation Bill of 1906, Congress abolished the Commission and ordered that its report be made not later than the 15th., of December of that year, and its report was then made. That report covered 1900 pages and embraced 9000 sections. It was apparent, of course, that in the ordinary course of business the House could with difficulty deal with such report, and a Joint Committee of the House and Senate consisting of five members from each body was appointed, whose duty it was to examine, consider, and submit to Congress recommendations upon the revision and codification of the laws prepared by the statutory revision commission. Now, that joint commission, acting during the vacation, and acting with a great deal of industry and zeal, as I understand it, presents to the House to-day this Bill, which codifies, revises, and amends the penal laws of the United States."

From then on Mr. Moon was in charge of the legislation in the House. At page 542, Id. after some discussion, we find:

"MR. MOON of Pennsylvania: Mr. Speaker, I move that the House resolve itself into the Committee of the whole house on the state of the Union for the consideration of a Bill (H. R. 11701) to codify, revise, and amend the penal laws of the United States."

On January 9th., the next day, page 564, Id., Senator Heyburn took charge in the Senate of the same Bill, known as "Senate Bill 2982".

It meandered through both Houses as time permitted, generally when few were present. When section 211 was reached on January 22nd., Mr. Houston of Tenn., introduced the amendment "vile, filthy, or indecent" recommended in the report of the Commission. The House seemed to be in a facetious rather than a serious vein in auticipation of this. Mr. Ollie James sent up to be read a piece of ribald humor directed at Mr. John Wesley Gaines of Tenessee, and immediately Mr. Houston introduced his amendment. In the first skirmish, Mr. Moon strenuously

objected. He thought the Bill was already broad enough. Mr. Houston was supported by Mr. Alexander of New York, who asked "if there is any objection to inserting the amendment", to which Mr. Moon answered "except that it is sufficiently covered in the section as it now stands." (After the Swearingen case.) Mr. Alexander thought there could be no objection. Mr. Moon, however, said the committee had spent a great deal of time upon the word "indecent" as already in the section, and the committee deemed it wise that the section stand as it is. He said, Id, 1995-6

> "the gentleman knows that a great deal of agitation has been going on throughout the country as to the signification of this word as applied to literature, and some books have been excluded from some libraries on the action of a committee because they deemed these books indecent, when, as a matter of fact, they were current literature of the day."

He mentioned Mark Twain, and said that the Committee held that,

> "the introduction of the word here would open such a broad field of construction on the part of the Judges and the Post Office Department in the application of the criminal statute that it is unwise to use it in the connection suggested by the genteleman from Tennessee"

Then Mr. Moon, Chairman added:

> "If the gentleman from New York (Mr. Alexander) asks whether there could be any objection to excluding from the mails all kinds of indecent literature, of course there can be none, and this committee will offer no objection to any amendment that will make that more clear, but they do not think the method proposed by the amendment will accomplish the purpose."

(This shows that the Chairman was thinking in terms of indecent *literature*.)

Mr. Shirley of Kentucky arose, saying that:

"In both answer to the gentleman from New York (Mr. Alexander) I think there are very serious objections to the amendment offered by the gentleman from Tennessee (Mr. Houston). Even in legislation, the thing desired by a man is frequently very foreign from what is accomplished by the particular language used. Now, all of us are in hearty accord with the desire of the gentleman from Tennessee (Mr. Houston) to protect the mails and the public from indecent and impure literature, but some of us who have taken the trouble to look into the history of this section and the matters that have been litigated in the courts, know that there is a very great danger by the use of such words as are suggested by the gentleman's amendment by giving to the Post Office Department a censorship of the press."

He too spoke of Mark Twain's books, showing the current of thought to be on literature, for he added:

"The word 'indecent' put in front of the word 'book' would be open to such construction as would practically enable the Deparement to exercise a censorship over the press, and while I think that perhaps we should take some steps looking to a better exclusion of improper literature from the mails, we ought to be exceedingly careful that we do not use language that simply enables the Department or some person in the Department to exclude books that may not appeal to him or her.

Mr. Alexander interrupted:

I desire to ask this question: Does the Department approve of the amendment of the gentleman from Tennessee (Mr. Houston)?

To which Mr. Shirley's answer seems in our opinion to add a flood of light on the whole controversy as follows:

I do not recall that the Department offered those words as an enlargement of the statute. It is true that Mr. Comstock appeared before our committee. He has been actively engaged in prosecuting violations of the existing law and has done very valuable work, but Mr. Comstock, like a great many gentlemen engaged in a special line, is apt to become just a bit extreme, and his view, if it had been adopted by the committee, would have given to the Department powers that could and would have led to great abuses. The committee has tried to make this section properly fulfil its mission without so enlarging it as to give to the Department the power to exclude a great many publications that the majority of men do not consider immoral or indecent.

After some further debate, Mr. Shirley said:

In further answer to the suggestion of the gentleman from New York (Mr. Alexander), I desire to say the committee did consider this section at great length, not only one day but for several days, and the final judgment of the committee was against the insertion of these words, though it was understood at the time that the gentleman from Tennessee would bring the matter to the attention of the committee of the whole house.

Then followed a vitally important contribution:

MR. PAYNE: Would it interrupt the gentleman if I should ask to have the clerk read the first four lines as the paragraph would be amended by the gentleman from Tennessee?

THE CHAIRMAN: (Without objection) The Clerk will read the amendment as reported.

The Clerk reads as follows:

every obscene, lewd, vile, filthy, or indecent book—

MR. PAYNE: I want to say, if the gentleman will allow me, that comparing the two, I think the language of the committee is better than that of the gentleman from Tennessee. I do not think he enlarges it.

MR. HOUSTON: I want to call the attention of the gentleman from New York to the fact that the Clerk did not report the amendment correctly.

THE CHAIRMAN (without objection) The Clerk will again report the amendment.

The Clerk reads as follows:

every obsence, lewd, lascivious, vile, filthy, or indecent book, pamphlet, picture, paper, letter, etc.

MR. SHIRLEY: It is proper to say to the committee as a whole that the courts in construing the words 'obscene, lewd, or lascivious' have narrowed these words within a very small compass. There is no doubt the amendment offered by the gentleman from Tennessee will considerably enlarge the statute, and my opposition to it is because it will enlarge the statute, not that I am opposed in the slightest to preventing the going through the mails of books that are really immoral, but I am not willing to have language capable of construction that these words are, particularly the word 'indecent' go into the statute, and thereby give the Postmaster General and those under him the power to exercise what I believe to be a censorship over the press.

MR. LITTLEFIELD: May I ask the gentleman from Kentucky, is it not a fact your section already contains language that in order to be consecutive and intelligible should have these words put in the precenting part of your section? You say on line 22, here, 'or for any indecent or immoral use'. Now, that is the first time in your section that the word indecent occurs.

MR. SHIRLEY: But if the gentleman will notice, the word 'indecent' here is qualified by the word 'use' so that it becomes very narrow. When you speak of an indecent book, there are as many opinions as people discussing the matter, and there have been hundreds of books published within the last year or two, that you will find a dozen opinions about as to whether they were or were not indecent books. That does not apply to 'indecent use'; there the word 'indecent' is limited, but here if placed in front of the word 'book', it becomes very broad.

MR. LITTLEFIED: That same criticism to a certain extent is applicable to 'indecent, lewd, and lascivious"

MR. SHIRLEY: The courts have construed these words so as to apply only to a certain line.

MR. LITTLEFIELD: And we simply take chances under this legislation as to getting the same kind of conservative construction on the part of the courts of the language suggested. Of course it is better—I agree that it is better.

MR. SHIRLEY: Inasmuch as you are broadening the statute, if the courts shall undertake in execution of the will of Congress itself, to construe what the words mean, it would be that it was intended to give greater power, a much greater power.

MR. LITTLEFIELD: I do not think the language of the section would be open to that construction.

Then Mr. Gaines of West Virginia and Mr. Shirley got into some discussion that is not relevant except to show there was no disposition to increase the power of the Department as to non-mailability. It also shows that the mind of Congress was on the circulation of *literature*, Mr. Shirley, in fact, making this statement:

"The trouble with the amendment of the gentleman from Tennessee (Mr. Houston) is that it applies to the word 'book'. The adjective 'indecent' is subject to such construction that no man can know how far the law would go. For that reason I am opposed to this amendment".

(Cong. Rec. Vol. 42, pages 996-997)

The debate then drifted off into irrelevant topics, but was fetched up by Mr. Houston, the author of the original amendment, who said:

"Mr. Chairman, this discussion has taken rather a broad range. In regard to the power to be vested in the Post Office Department, that is not especially pertinent to this discussion. This is simply the enactment of a penal statute making a certain thing unlawful, describing certain offenses against the penal laws of the United States. This does not involve the question that the Post Office Department might exercise an abusive power or a discussion of the extent to which that power might be abusive. The authority and the power is already involved just as much as it can be by the addition of the words that I have offered by way of amendment. It is already unlawful to publish any obscene, lewd, or lascivious books. You talk about the Post Office Department having authority and power to suppress publications of certain kinds and character. There are a great many publications that ought to be suppressed to the extent of being forbidden to be transmitted through the United States mail, *such as all those matters that relate to sexual impurity and others that would be excluded by this amendment. Perhaps some of the books referred to by the gentleman ought not to be transmitted through the mails. I do not recall the ones that come within that category.*" (*Italics ours.*)

"MR. SHIRLEY: Will the gentleman yield to a question?"

"MR. HOUSTON: In a moment, but I say that the power is here given to pass upon a book and to determine whether or not it is lawful to pass it through the mails. That power exists now as to those things forbidden and made penal by this statute — that is those things relating to sexual impurity. But if it does not relate to sexual impurity but to some vile, indecent, hideous, shocking kind of immorality or indecency of a different kind, then it is not forbidden from passing through the mails, and I want to say that these words that I have offered by way of amendment do enlarge that statute so as to embrace the other vile things.

"In response to the gentleman from New York who asked if the words in line 20 did not already give the same power, I want to say that these words "or other publications of an indecent character", according to the holding of the court in cases of that kind relate to similar matter, things of a similar character, and have been held to relate to matters concefning sexual impurity. Now those other things ought to be prohibited just the same. I want to call attention to the language of the Penal Code of New York, in forbidding the sale of certain articles along this line.

The articles that are forbidden to be sold are: 'any obscene, lewd, lascivious, filthy, indecent, or disgusting book'.

That is broader than this Federal statute a good deal. It is none too broad. I think this law ought to be broadened. I think it is necessary to broaden it if you would prevent other vile and indecent things going through the mails except the particular class the courts now hold to be excluded and that I have alluded to."

MR. PARSONS: I wish to suggest to the gentleman from Tennessee, my colleague on the committee, that there has been a recent decision by the Court of Appeals of New York which holds that the words of the section that he has just read apply only in a case where sexual impurity is

suggested, and that those words are confined to about the same meaning that they are here confined to.

MR. HOUSTON: Do you mean the words contained in my amendment?"

"MR. PARSONS: The words you just read from the New York Code."

MR. LITTEFIELD: If that were the correct construction, this would not enlarge the Act at all."

MR. PARSONS: I also wish to suggest to the gentleman from Tennessee that his words do not enlarge the Act; that a Federal Court has decided that the word 'obscene' in this section includes what is indecent or filthy. I will refer him to 'U. S. v. Smth, 45 Fed. Rep. p. 477' ".

MR. LITTLEFIELD: Then the Act is subject to all the adverse criticism made by the Committee."

This clearly shows that Congress had the Eastman (N. Y.) case in mind and was contemplating the word "filth" in the light of its meaning. It also shows Congress, thought the Federal Courts had already defined "filth" as synonymous with "obscene".

"MR. SHIRLEY: Mr. Chairman, I do not agree to that proposition at all.

"MR. CHAIRMAN: The time for the gentleman from Tennessee has expired.

"Mr. SHIRLEY: I ask that the gentleman's time be extended five minutes.

(It was extended)

"MR. SHIRLEY: Mr. Chairman, in answer to the question by the gentleman from New York and the gentleman from Maine, I desire to say that if the words do not enlarge the statute they are useless; if they do, I think we are going beyond where we can safely go. All of us agree we want to exclude from the mail an indecent book;

but you cannot get any agreement among us as to what is an indecent book. Some might thing that Fielding's 'Tom Jones' ought not to go through the mails. While the rest might think it was one of the classics in the English language, and should go through. There is the danger of using the word 'indecent' as applied to a book.

"MR. HOUSTON: I think that all that criticism applies to the statute as it now stands and as fully as it could with the amendment when it would be the same subject added to the one."

"THE CHAIRMAN: The question is on agreement to the amendment offered by the gentleman from Tennessee."

The question was taken and on a division there were Ayes 41 — Noes 21.

The question of quorum was raised and the discussion went over. This was on January 22nd, 1908.

There was no further discussion in the House during the 1st Session of the Sixtieth Congress. It went over. In the mean time, the same amendment was proposed in the Senate. It met with short shrift. Senator Heyburn said the Post Office Department had expressly requested "after the word 'lascivious' * * * insert 'or vile, or filthy, or disgusting' " He stated "the courts have held that certain matters do not come within the meaning of 'lascivious'."

Discussion showed that the Senate was opposed to enlarging the scope of the Bill.

Mr. Bailey objected to the word "disgusting".

Mr. Heyburn suggested that if any Senator "go down to the room of the Joint Committee on the Revision of the Laws he will see there ample reason for the insertion of this one particular word "disgusting'. The courts have interpreted the other words 'lascivious' and 'vile' and 'filthy' and yet in one place in Chicago we captured several tons of postal cards and mail matter that did not come within the definition of 'lascivious' or 'vile' or 'filthy' but they are of such a character as would leave

no occasion for argument if they could be inspected for a moment. They may be seen. They were sent over from the Post Office Department in support of their request that these words be inserted in the Bill. While I was not in favor of enlarging this or any other statute without a reason, upon seeing the class of matter which was captured recently I withdrew any possible objection to it."

Mr. Heyburn presented the matter because "our attention has been called to the decisions defining the meaning of the other words. Personally, I did not have it called to my attention until it was called to the attention of the Committee for the purpose of making the law so secure against the transmission of this class of matter that there could be no doubt about it."

MR. BAILEY: Does this section merely exclude it from the mail, or does it make it a crime for a man to put such matter in the mail?

MR. SUTHERLAND: If the Senator from Idaho will permit me, I will state that it makes it a penal offense for any person knowingly to deposit any of these things in the mail.

MR. HEYBURN: The language, if amended as I propose, will read this way:

Every obscene, lewd, or lascivious, or vile or filthy, or disgusting book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article—

enumerating them, are excluded from the mail, and—

Whoever shall knowingly deposit or cause to be deposited for mailing or delivery—

Then insert the words, 'any, etc'—

declared by this section to be non-mailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, etc.

That is the character of the provision

MR. BAILEY: Mr. President, I am clear that that is going too far. It is perfectly proper for the Government to make it a crime to use its mails for the transmission of vile, lascvious or obscene literature, but when you come to the point that is disgusting I think that is going too far * * *. Then I resent the idea that we have reached the point where we have to make it a crime in this country for one man to disgust another in any way * * *.

* * *

MR. SUTHERLAND: I agree with what the Senator from Texas has said about this matter. I think the statute goes quite far enough as it is. I am not only opposed to put the word 'disgusting' in the statute, but the word "vile". There are three words the Senator mentioned.

Mr. BAILEY: "vile" and "filthy".

MR. HEYBURN: vile", or "filthy" or disgusting".

MR. SUTHERLAND: I am opposed to putting in the word "vile", or "filthy", or "disgusting". * * *.

The amendment as reported was rejected.

(Cong. Rec. Vol. 42, Part 3. p. 2391-92)

Let us repeat that in both reports of the Commission to Revise and Codify the Criminal and Penal Laws of the United States we find recommended the inclusion of the word "'indecent, vile, or filthy" upon the solicitation of the Department. Nevertheless, the Senate excluded these words from its proposed bill. We are not able to find that it even concurred in the House amendment when the word "filthy" was finally added over there.

Consideration of the bill was not resumed in the House until the 2nd., Session, 60th., Congress, Vol. 43, Part 1, p. 283. Mr. Houston was prepared to offer a compromise. Mr. Mooon was willing to accept a compromise, the substitution of the word 'filthy" for all previously suggested amendments. But from

his own statement of what he understood the compromise to mean, the section by the addition of the word "filthy" would still make nonmailable only such literature as would lead to "corruption of morals". The substance of what Mr. Moon said, Cong. Rec. Vol. 43, Part 3, p. 2649, and as set out in the Government Brief, p. 31, was that he was wiling to make the section mean what he thought Congress intended when the Act was first passed and before the Swearingen case. He thought that by the use of the word "obscene" the intention was to prevent the "corruption of morals", and by the use of the words "lewd" and "lascivious" the intention was to bar such matter as was of sexual impurity. In other words, he felt that the Court in the Swearingen case had probably not adhered to what Congress originally meant by the use of the word "obscene". He thought that the word "filthy" would be taken as synonymous with what was the original meaning of the word "obscene". Nothing can be clearer however, than the long line of decisions before the Swearingen case holding that in such statutes as this the word "obscene" takes on a legal meaning which involves in some way the corruption of morals only by the arousal of impure thoughts. The word "obscene" is not a new one in the vocabulary of the law, nor was it new at the time "filthy" was used as its synonym. The Courts had always held it to be used according to the meaning in the Swearingen case. The word "filthy" was accepted by the Chairman of the Committee in its legal etymology.

It is only fair, however, to say that in the last few seconds of the perennial debate, Mr. Macon asked some questions of Mr. Moon which raised for the first time any inference that the statute might be directed against what he called "vulgar" private letters. The train was pulling out, as it were, and Mr. Moon when the House was just about ready, perhaps very gladly, to leave the question to a vote, waived good-bye to Mr. Macon in some ambiguous gesture from the platform. We submit that the question of what the word "filthy" meant must be judged by *all* the deliberations of Congress and not by the last few fleeting farewell words.

SUPREME COURT OF THE UNITED STATES.

No. 513.—October Term, 1931.

The United States, Appellant, vs. O. B. Limehouse. | On Appeal from the District Court of the United States for the Eastern District of South Carolina.

[April 11, 1932.]

Mr. Justice Brandeis delivered the opinion of the Court.

Section 211 of the Criminal Code declares unmailable, "every obscene, lewd, or lascivious, and every filthy, book, pamphlet, picture, paper, letter, print, or other publication of an indecent character"; and provides that "whoever shall knowingly deposit, or cause to be deposited for mailing and delivery" any such unmailable matter "shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

Under this statute Limehouse was indicted in the federal court for eastern South Carolina. The indictment contained thirty counts, each charging the unlawful deposit of "a certain filthy letter and writing in a certain post office". Each set forth *verbatim* a separate letter. The letters contained much foul language; charged the addressees or persons associated with them with sexual immorality, and in some cases charged miscegenation and similar practices. They were coarse, vulgar, disgusting, indecent; and unquestionably filthy within the popular meaning of that term. On the ground that no letter was obscene, lewd or lascivious within the meaning given to those terms in *Swearingen* v. *United States*, 161 U. S. 446, the District Court sustained a demurrer and quashed the indictment. The case is here by direct appeal under the Criminal Appeals Act as amended.[1] We are of opinion that the judgment should be reversed.

In *Swearingen* v. *United States*, decided in 1896, the indictment was under Revised Statutes § 3893, which made unmailable only

[1] See Acts of March 2, 1907, c. 2564, 34 Stat. 1246; February 13, 1925, c. 229, 43 Stat. 936, 938; January 31, 1928, c. 14, 45 Stat. 54; and April 26, 1928, c. 440, 45 Stat. 466.

"obscene, lewd, or lascivious" matter. This Court, being of opinion that those words should be given the meaning attributed to them at common law in prosecutions for criminal libel, directed that the judgment of conviction be reversed, because the language used was not "calculated to corrupt and debauch the mind and morals of those into whose hands it might fall" and induce sexual immorality. 161 U. S. at 451. The indictment here under review contains no reference to "obscene, lewd, or lascivious." The charge is of depositing "a certain filthy letter." It is brought under the amendment to § 3893 of the Revised Statutes made by § 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129, which inserted the words, "and every filthy". Now the clause reads "every obscene, lewd, or lascivious, and every filthy, book, . . . letter."

The lower court failed to recognize that the amendment introduced, not merely a word, but a phrase. Disregarding the collocation of the words, it treated the amended clause as if it had read "obscene, lewd, lascivious, or filthy;" and then, applying the doctrine of *noscitur a sociis*, gave to "filthy" the meaning attributed in the *Swearingen* case to the words "obscene, lewd, or lascivious." Thus, the court emptied the amendment of all meaning. We think that it is a more natural reading of the clause to hold that by the amendment Congress added a new class of unmailable matter,—the filthy.[2] The letters here in question plainly relate to sexual matters. We have no occasion to consider whether filthy letters of a different character fall within the prohibition of the Act.

Reversed.

Mr. Justice McReynolds thinks the judgment should be affirmed.

Mr. Justice Cardozo took no part in the consideration or decision of this case.

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[2]For the legislative history of the amendment see Senate Doc. No. 68, Pt. 2, p. XVI, Cong. Docs. 4227, 4228, 57 Cong. 1st Sess., Senate Docs. Vols. 9, 10; House Report No. 2, Pt. 1, p. 2, 60th Cong., 1st Sess., Cong. Doc. 5225; Final Report, 1906, U. S. Commission to Revise the Laws, Vol. 1, p. 107 under Sec. 8845, Vol. 2 (proposed bill), p. 1813; Senate Report No. 10, Pt. 1, p. 22, Pt. 2, p. 230, "Sec. 212," 60th Cong., 1st Sess., Cong. Doc. 5220; House Report No. 2, Pt. 1, p. 22, 60th Cong., 1st Sess., Cong. Doc. 5225; 42 Cong. Rec., Pt. 1, pp. 539-542, 564, 995-999; *id.*, Pt. 3, pp. 2391-2392; Vol. 43, Pt. 1, pp. 283-284, 2649; *id.*, Part 4, pp. 3217-18.